SCOTTSDALE

CITY COUNCIL MEETING



ETHICS TRAINING NOTICE AND AGENDA

COUNCIL

Mary Manross, Mayor Betty Drake Wayne Ecton W.J. "Jim" Lane

Robert W. Littlefield Ron McCullagh Tony Nelssen Monday, August 28, 2006

1:00 P.M.

CITY COUNCIL ETHICS TRAINING

Call to Order – Human Resources Pinnacle Conference Room, 7575 E. Main Street

Roll Call

1. Ethics Training

Staff Contact(s): Deborah W. Robberson, City Attorney, (480) 312-7994, drobberson@scottsdaleaz.gov

On May 2, 2006, the Scottsdale City Council passed and adopted Resolution Nos. 6879 and 3675 establishing the City of Scottsdale Public Service Ethics Program and a Code of Ethical Behavior related to elected and appointed officials, which became effective July 1, 2006. The Ethics Program and Code requires that annual ethics training shall be provided to the Mayor and members of the City Council.

This ethics training for the City Council will include the following components:

- Explain the letter and spirit of public service ethics laws regulating service to the City.
- Use case studies or examples illustrating the application of the public service ethics laws.
- Identify the approved process to follow should City officials have questions or concerns regarding their activities or those of others in City service.

The training session is instructional and informational. No public business will be considered; however, the City Council members may engage in discussion about ethics issues as part of this training session.

Adjournment

Note: The regular City Council Meeting will begin at 5 p.m.

CITY OF SCOTTSDALE PUBLIC SERVICE ETHICS TRAINING

City Council

August 28, 2006

CITY OF SCOTTSDALE PUBLIC SERVICE ETHICS TRAINING

TABLE OF CONTENTS

Training Outline (Powerpoint)

Resolution No. 6879—Public Service Ethics Program

Ordinance No. 3675—Code of Ethical Behavior

Definitions—SRC § 2-47

Ethics Policy—SRC § 2-48

Ethics Policy Acknowledgement and Agreement

Conflicts of Interest—SRC § 2-49

- 1. Article 8, Section 6, Scottsdale City Charter
- 2. ARS §§ 38-501 et seq. (Conflict of Interest of Officers and Employees)
- 3. Personal Interest Disclosure Form
 Declaration of Conflict of Interest or Personal Interest Form

Gifts; prohibited; exceptions—SRC § 2-50

- 1. SRC § 14-135 (Gifts and Gratuities)
- 2. City-sponsored events (Source: http://devintranet/hr/ethics_corner/events2.pdf)
- 3. Declaration of Gifts Form

Open government—SRC § 2-51

Open meeting laws—SRC § 2-52

- 1. ARS §§ 38-431 et seq. (Public Meetings and Proceedings)
- 2. AG Op. I05-004 Re: Open Meeting Law Requirements and E-mail to and from Members of a Public Body (July 25, 2005).

Preservation and availability of Public Documents—SRC § 2-53

Undue Influence on Subordinates—SRC § 2-54

 Article 2, Section 17, Scottsdale City Charter (Interference in administrative service)

Enforcement—SRC §§ 2-55 et seq.

Complaint Against City Official—City of Scottsdale Code of Ethical Behavior Form

"You As a Public Official"

ETHICS TRAINING

"Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly."

-Thomas Jefferson

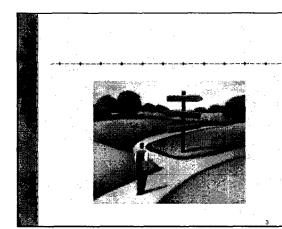
HISTORY

<u>September 20, 2005</u>—City of Scottsdale Citizen Code of Ethics Task Force ("Task Force") established by City Council

October 4, 2005—City Council appoints seven citizens to serve on Ethics Task Force

April 3_2006—Task Force presents Final Report ("Final Report") to Mayor and City Council

May 2, 2006—City Council adopts Public Service Ethics Program (Resolution No. 6879) and Code of Ethical Behavior (Ordinance No. 3675), effective July 1, 2006



PUBLIC SERVICE ETHICS PROGRAM (RESOLUTION NO. 6879)

- 1. ILLUMINATION
- Ethics Policy Acknowledgement and Agreement
- □ Personal Interest Disclosure Form
- 2. EDUCATION
- Public Service Ethics Training-all City officials
- 3. ENFORCEMENT

CODE OF ETHICAL BEHAVIOR FOR **CITY OFFICERS**

Effective date: July 1, 2006

- Definitions—SRC § 2-47
- Ethics policy-SRC § 2-48
- Conflict of interests—SRC § 2-49
- Giffs; prohibited; exceptions—SRC § 2-50 Open government—SRC § 2-51
- Open meeting laws, executive sessions—SRC § 2-52
- Preservation and availability of public documents—SRC § 2-53
- Undue influence on subordinates—SRC § 2-54
- Enforcement—SRC §§ 2-55 through 2-58

DEFINITIONS—SRC § 2-47

City official—"mayor, council members, individuals appointed to boards, commissions, committees, task forces, and other appointed advisory groups"

City of Scottsdale Code of Ethical Behavior

SRC §§ 2-47 through 2-59; 2-243

Ethics Code

□ City of Scottsdale Code of Ethical Behavior

WHAT IS "ETHICS"?

Ethics—the rules or standards of good conduct governing a group or the members of a profession

Ethical—conforming to the accepted standards and principles applicable to a group or members of a profession

ETHICS POLICY—SRC § 2-48

(a) Uphold, promote and demand highest standards of ethical behavior from public officials

Hallmarks of public service: honesty, integrity, fairness, and transparency of action

Prohibits use of office/position for influence or personal gain

ETHICS POLICY—SRC § 2-48 (Continued)

- (b) Obey and observe letter and spirit of constitutions, laws and Ethics Code
- Matrix of Laws
- (c) Agree to comply with laws, regulations, policies and Ethics Code and annual training
- Ethics Policy Acknowledgement and Agreement

ETHICS POLICY—SRC § 2-48 (Continued)

- (d) SRC §§ 2-47 to -59 identifies key areas of clarification and emphasis
- Conflicts of Interest
- & Giffs
- Open Government
- ≅ Open Meetings
- # Public Documents
- Undue Influence on Subordinates

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CONFLICT OF INTEREST - § SRC 2-49

- Not new requirements
- Established by state law (A.R.S. §§ 38-502 to -511)
 - · Charter requires compliance
 - ♦ Local government pre-empted

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CONFLICT OF INTEREST - PRINCIPLE

Not "bad" to <u>have</u> a conflict, but <u>illegal</u> to fail to declare or participate ("You as a Public Official")

CONFLICT OF INTEREST A.R.S. § 38-503

- # If a public officer or employee
- has a "substantial interest"
- # in a contract, sale, purchase or service, or
- any decision

 any decision

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"Relative"

- x spouse
- ≖ child
- child's child
- ≖ parent
- ≖ grandparent
- brother or sister of the whole or half blood

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More relatives

- ≖ and
- # their spouses and
- the parent, brother, sister or child of a spouse

"Substantial interest" means

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- "Any pecuniary or proprietary interest, either direct or indirect, other than a remote interest."
- ≈ Pecuniary = financial
- Proprietary = ownership

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WHAT ARE REMOTE INTERESTS? (A.R.S. § 38-502(10)

11 Remote Interests

- "Class of 10"
 - Member of trade, business, profession, occupation, or class of persons

No greater interest than others

- Non-salaried officer/member of non-profit
- * Member of a non-profit cooperative marketing association
- Reimbursement of actual and necessary expenses incurred in performance of official duties
- Receiving municipal services on same terms as non-officials
- · Landlord, tenant, or attorney of contracting party
- Others stock ownership, another government entity

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WHAT TO DO IF CONFLICT EXISTS – SRC § 2-49

- Immediately refrain from participating
- in City's "decision-making process"
- ≖ in any manner
 - voting
 - ◆plus: "any aspect of any decision"
 - *attending meetings
 - written or verbal communication
 - ◆offering advice

WHAT TO DO IF CONFLICT EXISTS (Cont'd)

to:

- *member of city council
- *any city employee
- *contractor, agent
- *charter officer
- member of board, commission, committee
 Exception: City Attorney re: conflict question

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IF CONFLICT EXISTS – (Cont'd)

- - . Publicly state at meeting
 - Update and file Disclosure Form (within 3 business days)
- Must recuse and leave room

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PENALTIES - A.R.S. § 38-510

- Intentionally or knowingly
- Class 6 felony \$150K/1½ years

 □ Class 6 felony \$150K/1½ years
- Recklessly or negligently
- Class 1 misdemeanor \$2,500/6 months

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WHAT IF I THINK I MIGHT HAVE A CONFLICT?

City attorney will:

- (1) Get facts and confer with you
- (2) Prepare formal written opinion, if requested.
 - filed with clerk
 - valuable protection

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MORE PROHIBITED ACTS - (A.R.S. §§ 38-504-505)

- ≈ Representing a person before the public body for compensation within 12 months
 - *Concerning matter directly involved in
- - *Never if confidential by law
 - ◆2-years after term if confidential by designation

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MORE (A.R.S. §§ 38-504-505)

- * Receive any compensation for performance of official duties, except as provided by law

IF I DON'T HAVE A LEGAL CONFLICT OF INTEREST, DO I STILL NEED TO BE CONCERNED? Depends... Subsection 2-49(e) of the Ethics Code provides: City officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interest, but where active participation might raise the perception of undue influence or impropriety. PERCEPTION OF UNDUE INFLUENCE OR IMPROPRIETY Suggestion: Will the person I vote against think the decision was fairly made? **CONFLICTS SCENARIOS** 1. Your spouse is President of XYZ Trophy Company. You have a rule that you never talk shop at home. While you are sitting on the dais and reviewing the meeting agenda, you notice an item to award XYZ a \$25,000 contract to provide trophies for the City's synchronized swimming team. What do you do?

CONFLICTS SCENARIOS

2. For 25 years, you worked for Happy Smith Aerial Photography, Inc. You started as an errand boy in high school and worked your way up to Sr. Vice President of Human Resources. To your significant financial satisfaction, the company went public 5 years before you retired. You retired last year and successfully ran for City Council. Happy Smith owns property in Scottsdale and your friend and longtime work colleague, the Sr. VP of Facilities for Happy Smith, told you they have submitted an application for re-zoning to build a new corporate headquarters. What do you do?

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CONFLICTS SCENARIOS

3. You serve on the Board of Directors of a charity that supports persons afflicted by a certain medical syndrome. That charity has finally raised enough money to build its own office building. You've been in charge of fundraising for this project. The charity owns property in Scottsdale, and will need to get re-zoning. What do you do?

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GIFTS; PROHIBITED; EXCEPTIONS - SRC § 2-50

- (a) Prohibitions
- Soliciting, receiving, accepting gifts
- of any kind"
- ♣ From

Anyone engaged in general practice

or

Specific situation involving City decision-making or permitting processes

Exceptions – subpart (b)

"Gifts of Any Kind" – SRC § 2-50(a)

- Defined
- Money, services, loans, travel, hospitality (including meals), entertainment
- □ Promises of future gift
- Anything of value that might be construed as attempt to create more favorable relationship than general public, including
 - purchase, sale, lease personal or real property at other than fmv by official or relative or entity
 - employment/services/contracts, direct or indirect, with official, relative, entity

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EXEMPTIONS - SRC § 2-50(b)

- Entertainment, hospitality (meals), transportation and token mementos
- Directly associated with <u>events</u> attending as representative of City

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EXEMPTIONS - SRC § 2-50(b) (Cont'd)

- If permissible gift
 Declare to City Clerk if \$25 +
 Use Declaration of Gift Form
- Unless SRC § 14-135 does not require reporting

SRC § 14-135 – NOT CONSIDERED

- "Reflect legitimate public duties or purposes"
- Not considered gifts
- Events sponsored or funded, in whole or part, by City
- Reasonable hosting expenses for official speaking, engagements, ceremonies or appearance on behalf of City when public or civil purpose is served.
- Gifts of goodwill or tokens of appreciation accepted on behalf of City

Food - shared with others

4. Received and donated to charity

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SRC § 14-135 – Gifts and Gratuities

- Applies to elected and appointed officials
- Additional prohibited gifts
 - Soliciting items of value for personal benefit
 - Gratuities, tips, honoraria or payments for official duties
 - Items that are reasonably construed to exert improper influence on decision/action or as reward

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GIFT SCENARIO

- You are invited to the Arizona State University to speak to students in the MPA Program. Your presentation is part of a day-long conference with speakers from many disciplines. The professor has asked you to be the lunch speaker and to provide insights into the local political process.
- Can you enjoy the lunch provided by PF Chang's?
- Can you accept mileage reimbursement?
- ≅ Can you accept the \$25 VISA™ gift certificate given as a thank you to all speakers?

GIFTS SCENARIOS

2. Box of chocolates addressed to you arrives at the City Council's City Hall offices during Holiday time. It's from Attorney V. Attorney V is known to you as he has represents clients frequently on development applications that come before the City Council for approval. You know of no current issues or cases on which Attorney V is working. What do you do?

GIFTS SCENARIOS

3. Box of brownies addressed to you appears on your desk in your City Hall office during Holiday time. It comes with a note that says: "Thanks for your hard work and public service." It's from Citizen X. You do not know Citizen X and have never heard of him. What do you do?

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GIFTS SCENARIOS

4. The entire CC is invited to the FBR open and the City provides tickets.

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GIFTS SCENARIOS

5. Every member of the City Council is invited to attend and receives two tickets to the annual fund-raising gala for a non-profit charity. A purchased ticket costs \$100. What do you do?

OPEN GOVERNMENT - SRC § 2-51

- (a) Official Arizona public policy that meetings be public
- (b) "Mindset of openness" in conducting affairs
- Adherence to open meeting laws preferably exceed
- Exercise caution regarding executive sessions
- Do not circumvent through technology or schemes
- No favoritism regarding access to information
- (c) City attorney to vigorously promote and enforce open meeting laws, being proactive and assertive

OPEN MEETING LAWS

"All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A)

Public policy: business of the public should be done in public.

WHAT'S A MEETING? - A.R.S. § 38-431(4)

- in person or
- through technological devices
- of a quorum of members of a public body
- = at which they
 - discuss
 - propose or
 - take legal action,
 - including any <u>deliberations</u> by a quorum with respect to action

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BASIC OPEN MEETING LAW REQUIREMENTS

Notices ...

- At official posting place
- NLT 24 hours before meeting New (eff. 9/21/06)
- Must post on website

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BASIC OPEN MEETING LAW REQUIREMENTS (Cont'd)

Agendas

- available 24 hours before meeting
- # item must be on Agenda
 - Anything not reasonably related cannot be discussed.

not

MINUTES ARE REQUIRED

- May be written or recorded
- Must be available within 3 days
 - Executive Session confidential

New (eff. 9/21/06)

- □ Post minutes within 2 working days after approval

EXECUTIVE SESSIONS – A.R.S. § 38-431.03

- Public not allowed to attend <u>discussion</u>
- But vote must occur in public
- May be held only in situations allowed by statute

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EXECUTIVE SESSION TOPICS (38-431.03)

- Personnel matters
- E Legal advice
- A Litigation or settlement
- ■ Confidential records
- Real property
- ▼ Specific negotiations (tribal, etc.)

EXECUTIVE SESSIONS - SRC § 2-52

- * Infrequently and only in clearly compelling circumstance
- * Public vote, after introduction on agenda, explanation of need, assent by City Attorney
- - Except: personnel sessions may attend, if requested
- ★ City Attorney must give confidentiality reminder

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OPEN MEETING LAW SANCTIONS

- removal from office intentional
- any other equitable relief
- actions at meeting are null & void

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ACCIDENTAL MEETINGS?

- E Quorum shows up at another public or community meeting and discuss matters that may come before them in the future
- Quorum shows up at a restaurant or social gathering and discuss matters that may come before them in the future
- City practice to post events quorum may attend
- ⊼ KEY: If quorum do not discuss Council business

Members cannot use e-mail to circumvent the OML # Quorum cannot use e-mail to: - Discuss council business - Deliberate on council business - Take legal action - Propose legal action

Anything that might foreseeably come before the Council for action

≭Council's statutory authority

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PROHIBITED 2-WAY COMMUNICATIONS

- □ Discussing
- Deliberating
- Taking legal action

Back and Forth Between a Quorum

TWO WAY COMMUNICATIONS ...

- On topic that could foreseeably come before Council
- Among enough members to constitute a quorum
- Constitutes a "meeting" through technological means
- **THEREFORE, VIOLATES THE OML**

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SERIAL COMMUNICATIONS – MAY VIOLATE OML

 Verbal – going from one person to the next, sharing communications would violate OML
 - "splintering the quorum" prohibited

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FACTS VS. OPINION?

- There is no distinction between discussion of facts
 vs. discussing opinions among a quorum
- ▼ Two-way discussion of facts (by quorum) regarding potential business = violation
- Deliberation = "collective acquisition and exchange of facts preliminary to a final decision"

PROHIBITED 1-WAY COMMUNICATION

- Proposing legal action
- ≖ "Propose" urges outcome
- t it only takes one person to propose legal action

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PROPOSING AN AGENDA ITEM?

- * "without more"
- * be cautious communicate the TOPIC only
- NOT the legal action you want the body to take

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"PROPOSE" – Examples in the AG Opinion

- "Councilperson Smith was admitted to the hospital last night"
 - Does NOT propose legal action
- * "We should install a crosswalk at First and Main"
 - Does propose legal action
 - It's more than a topic for the agenda because it urges outcome

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"PROPOSE" - Examples (Cont'd)

- "I would like to discuss roundabouts at our next meeting."
- "Here's an article on a program the City of Minneapolis has put in place."
- "We need to adopt a program like the one discussed in the attached article."

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ONE-WAY E-MAIL FROM STAFF

- ≅ Passive receipt of information from staff, without more, does not violate OML
- Staff may send e-mail to members
- ★ Staff may not send opinion or substantive communication about Council business from one member to enough other members to constitute a quorum

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STRONG AG RECOMMENDATION

- ≅ Council members should communicate about Council business at open public meetings, not email

AG E-MAIL HYPOTHETICALS ★ Assume the e-mails are not sent by a board member or at the direction of a board member with the purpose of circumventing the OML legal action Hypothetical a. Discussions between less than a quorum that are forwarded to a quorum By a board member or at board member's direction *** WOULD VIOLATE OML** Hypothetical b. A staff member e-mails a quorum ▼ No further e-mails among the board members **■ NO VIOLATION OF THE OML**

Hypothetical c. Member A on 5-member board cannot e-mail members B and C and communicate what D and E have said on the topic * Chain of improper serial communication between a quorum Hypothetical e. no violation ■ If board member replies to Superintendent – OK If board member replies to all or a quorum = VIOLATION If Superintendent forwards board members ■ If Superintendent forwards board members ■ If Superintendent forwards board members responses to a question = VIOLATION Hypothetical g. ■ Board member may send cc on a response to a constituent Constitutes a one-way communication that is not a discussion, deliberation or taking legal action Other board members may not reply

Hypothetical h. Board member may ask staff for specific information and cc other board members communication of opinions of other board members ■ Board members may not reply to enough to make a quorum = discussion or deliberation Hypothetical i. ■ Board member may send an article, report or factual information to the other members or staff and ask that it be included in agenda packet ■Board members may not discuss the information via e-mail (or otherwise) - amongst quorum **Protective Measures** Add notices (warnings) to e-mails

PRESERVATION AND AVAILABILITY OF PUBLIC DOCUMENTS SRC § 2-53 (a) Written communications between public officers and citizen on City business = public documents (b) must be preserved in compliance with City's document retention policy PUBLIC DOCUMENTS - SRC § 2-53... City electronic communications for official business only, except for limited permissible personal uses ■ no commercial or inappropriate uses of City e-**Public Document Scenarios** You and your wife have an e-mail account on Hotmail. Friends of yours e-mail you complaining about an item on your next meeting agenda and asking you to vote "no." What do you do?

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| Public Document Scenarios | |
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| 2. You receive an e-mail at your City e-mail | |
| address from your brother requesting that you run an errand for him in downtown Scottsdale. What do you do? | |
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| Public Document Scenarios | |
| Fublic Document Scenarios | |
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| You get a fax from another council member at your out-of-state hotel about City business. | |
| What do you do? | |
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| UNDUE INFLUENCE ON | |
| SUBORDINATES—SRC § 2-54 | N. 20. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. |
| | |
| (a) City Charter- "administrative authority is vested solely in the city manager" | |
| E City Council may make inquiries of staff, but not | |
| interfere with city manager's authority No "orders, explicit directions or requests, publicly or | |
| privatelyto any subordinates of city manager." | |
| ≍ No influence on city manager re: hiring or firing | |
| | |

INQUIRY VS. ORDER/DIRECTION?

- No additional direction
- Use common sense
- Standing permission from City Manager re: use of Mayor and Council staff to gather information
- New project or "original" work go through City Manager

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Undue Influence Scenarios

- Ask Council staff for all prior contracts with ABC Corp.
- Ask Planning staff to draft ordinance to regulate X
- Ask Assistant City Manager to provide information on construction of skateboard park, concluded several years ago
- Ask Transportation staff for white paper analysis on new program implemented in Syracuse, NY for reducing graffiti

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Undue Influence Scenarios (Cont'd)

- E-mail Code Inspection Manager regarding property you saw over weekend and tell him he needs to issue a citation
- E-mail Code Inspection Manager and tell him to inspect certain property because you received constituent e-mail complaining of property maintenance violations.

ENFORCEMENT - SRC § 2-55 to -58

COMPLAINTS

- Violation of mandatory provisions
- Required contents and form

 - ID not anonymous
 Violation, facts, documents, witnesses
 - ♦ If > 90 days, when learned
 - * Sworn complaint affidavit
- Time earlier of: 365 days after violation or 90 days after discovery

ENFORCEMENT – (Cont'd)

- Penalty for false or frivolous
 - Knowingly -criminal perjury civil, e.g. defamation
 - City Attorney review and may refer to law enforcement
 - City official personal civil action
 - Election Complaints
 - * File with City Clerk

Complaint Processing

- Two Separate Procedures:
- NON-CITY COUNCIL (§ 2-56);
- Initial review by City Attorney
 - Dismiss if incomplete, untimely, no violation of mandatory
 - Refer to law enforcement or appropriate authorities
 - Take action
- Investigate and make findings, conclusions,
 - 30 days (15-day extension from Mayor)

City Council consider at public meeting

Penalty - may remove from office

Complaint Processing (Cont'd)

CITY COUNCIL (2-57)

- Independent Ethics Reviewers
 - Panel 10-12 retired judges, legal faculty
 - At least 2/3
 - Non-resident
 - No regular Scottsdale work
- Uthers if not enough judges/faculty

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Complaint Processing (Cont'd)

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- Independent Ethics Officers (IEO)
 - · City Attorney annually nominate
 - Panel confirms or makes alternative selection
 - Serve no more than 1 consecutive year

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Complaint Processing (Cont'd)

Screening and Review

City Attorney transfers to IEO immediately

- # IEO conducts initial screening
 - Dismiss: incomplete, untimely, no mandatory violations alleged
 - Refer to appropriate authority if false, frivolous, etc.
 - * Refer to Independent Ethics Panel
 - 3 persons
 - Selected by IEO

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Complaint Processing (Cont'd)

Review by Ethics Panel:

- Panel investigates and makes findings of fact and conclusions of law
- Report to City Council, complainant, official, City Attorney, and City Clerk
- 60 days (30-day extension from IEO)

City Council considers report at public meeting

· Accept or reject report as submitted

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Complaint Processing (Cont'd)

- Public Information
 - · Notice of disposition of complaint
 - Reports
 Filed with City Clerk
- Rules of Procedure
 - Developed by City Attorney
 - To govern review process

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TAKE THE HIGH ROAD



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| | GIFTS SCENARIOS | |
| 2. | Longtime friend of 12 years calls and | |
| | invites CC member to Diamondbacks game two weeks from Thursday. Can | |
| | you accept this invitation? | |
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| | GIFTS SCENARIOS | |
| 3. | This longtime friend is a huge fan of CC | |
| | member. Friend helped in your campaign for CC, including making maximum financial | |
| | contribution, raising money, and helping in the campaign office. He offered to put up | |
| | your signs, but you didn't have any. Can you accept his invitation to the | |
| | Diamondbacks game? | |
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GIFTS SCENARIOS

4. The big day arrives and you and your friend are off to the game, peanuts and popcorn in hand. It's especially congested and it takes a lot of time and perseverance to navigate Pima Road. You're looking forwarding to a relaxing time at the game. As you get to your seats, friend waves to a guy sitting in your seat. Friend turns to you and says, "Oh, yeah, I forgot to tell you that I invited John Barrymore to join us." Although you are initially excited that you will be socializing with an icon of American thespian families and the father of Drew Barrymore, you eventually recognize him as the CEO of a company that was recently awarded a lucrative contract with the City. What do you do?

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GIFTS SCENARIOS

5. During the game, you and John learn that you both enjoy model trains. There's a national model train convention next month in San Diego. John takes a liking to you and invites you to free use of his condo during the convention. What do you do?

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GIFTS SCENARIOS

6. A few days before your outing to see the team for which The Big Unit no longer pitches, you learn that your friend has submitted a development application to the City. What do you do now?

GIFTS SCENARIOS

7. A very successful Scottsdale developer calls your secretary to schedule lunch. He says he wants to celebrate your birthday at Mary Elaine's – drinks and food on him. This developer has a current project working its way through the approval process at the City. What do you do?

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GIFTS SCENARIOS

 A less successful developer calls to schedule a meeting at Starbucks – coffee on him. What do you do?

RESOLUTION NO. 6879

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, ADOPTING A PUBLIC SERVICE ETHICS PROGRAM FOR CITY OFFICIALS.

WHEREAS, on September 20, 2005, the Scottsdale City Council, in response to a citizen's petition and after receiving a report from City staff, established the City of Scottsdale Citizen Code of Ethics Task Force ("Task Force"), charging it with recommending a code of ethics or ethics policy for the City Council and members of City boards and commissions; and

WHEREAS, on October 4, 2005, the City Council appointed seven Scottsdale citizens to serve as members of the Task Force; and

WHEREAS, over the four months following the appointment of the members of the Task Force it engaged in research, discussion, and debate about the best course of action for the City of Scottsdale, holding ten public meetings and receiving information and receiving comments from numerous citizens, who contributed to the final product by sharing their insights and perspectives; and

WHEREAS, on April 3, 2006, the Task Force presented its Final Report ("Final Report") to the Mayor and City Council, which included several recommendations to promote ethical behavior in Scottsdale city government, one of which was to adopt the City of Scottsdale Public Service Ethics Program, which was presented as a part of the Final Report; and

WHEREAS, the City Council believes that the adoption of the proposed City of Scottsdale Public Service Ethics Program and a Code of Ethical Behavior, relating to elected and appointed officials of the City; including the Mayor, City Council members, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups (collectively "City Officials"), is in the best interests of the City and its residents to promote ethical behavior by City Officials.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Arizona, as follows:

Section 1. The Mayor and City Council hereby accept the Final Report of the City of Scottsdale Code of Ethics Task Force, attached as Exhibit A to this Resolution and incorporated by this reference, and the recommendations made in the Final Report.

Section 2. The Mayor and City Council hereby adopt the Public Service Ethics Program set forth in Exhibit B to this Resolution, which is incorporated by this reference.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 2nd day of May, 2006.

ATTEST:

Carolyn Jagger City Clerk

APPROVED AS TO FORM

Deborah W. Robberson

City Attorney

CITY OF SCOTTSDALE, an Arizona

municipal corporation

May Marcon

Mary Manros

Mayor



Final Report: Scottsdale Citizen Code of Ethics Task Force

On September 20, 2005, the Scottsdale City Council, in response to a citizen's petition and after receiving a report from City staff, established the City of Scottsdale Citizen Code of Ethics Task Force. The Council charged the Ethics Task Force with recommending a code of ethics or ethics policy for the City Council and members of City boards and commissions. On October 4, 2005, the City Council appointed seven Scottsdale citizens to serve as members of the Ethics Task Force:

- Art DeCabooter (Chair), President of Scottsdale Community College
- Jim Bruner, attorney, banker, and former Councilman and County Supervisor
- Jim Derouin, attorney and the person who filed the citizen's petition
- Margaret Dunn, business owner
- Ned O'Hearn, former Councilman
- Rita Saunders-Hawarnek, Scottsdale Coalition board member
- Dewey Schade, businessman and public commission member

For assistance, the Task Force consulted with Dr. Teri Traaen, General Manager of Human Resources, who wrote her dissertation on ethics when earning her Ph.D. in Public Administration. The Task Force also retained Tim Delaney, President of the Center for Leadership, Ethics & Public Service and former Solicitor General of Arizona, to help the Task Force design an ethics program for the City of Scottsdale.

Over the next four months, the Task Force engaged in research, discussion, and debate about the best course of action for the City of Scottsdale. The Task Force held ten public meetings and heard from numerous citizens who contributed to the final product by sharing their insights and perspectives.

The Task Force also discussed the need to ensure that all of the City's representatives – not only elected and appointed officials, but also employees – be aware of and honor ethical guidelines. Being mindful of the Task Force's charge to focus on ethical matters relating to elected and appointed officials (the Mayor, City Council members, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups – collectively, "City officials"), and recognizing that the City Manager has been developing a set of ethics policies for City employees (in a draft Administrative Regulation 320), the Task Force focused primarily on ethics relating to City officials.

The Task Force developed a comprehensive ethics program that combines *illumination* of existing public service ethics laws so City officials will know their obligations and the standards against which their actions will be measured, *education* to make sure City officials understand their legal obligations and where to turn if they have questions, and *enforcement* procedures to

ensure that processes are in place to file, evaluate, and, if appropriate, take action on complaints that City officials violated ethics laws. Highlights of this comprehensive ethics package include:

Illumination

- As a prerequisite to exercising the authority of office, each City official must first read and sign the "City of Scottsdale Code of Ethical Behavior" that underscores key elements of public service in Scottsdale;
- The new ethics code includes an annotated matrix of public service ethics laws to emphasize some critical components of existing ethics laws; and
- As a prerequisite to exercising the authority of office, each City official must first complete a "Personal Interest Disclosure Form" to help identify and avoid potential conflicts of interests.

Education

- Each City official will receive ethics training within 30 days of being sworn into office, and each City employee will receive and agree to follow the City's Administrative Regulation on ethical standards at an employee orientation and attend ethics training within 90 days of being hired;
- Each year thereafter, every City official and employee will receive continuing ethics education as reminders about these laws and updates on any changes; and
- Each time someone completes a training session, the person will sign a statement confirming that he or she has completed the training and acknowledging that he or she is aware of the public service ethics laws and will abide by them.

Enforcement

- Mechanisms must be in place for individuals to report concerns about alleged violations of ethics laws by City officials, so the program includes filing procedures and a process for meaningful review of any complaints; and
- > To protect citizens who serve this City from being abused by frivolous or bad faith complaints, all filings must be thoroughly documented and submitted under penalty of perjury, as is done in other jurisdictions.

Based on the foregoing, the City of Scottsdale Citizen Code of Ethics Task Force recommends the City Council take the following actions to promote ethical behavior in Scottsdale city government:

- 1. Adopt as a resolution the "City of Scottsdale Public Service Ethics Program" that is attached hereto as Exhibit 1;
- 2. Adopt as an ordinance the "City of Scottsdale Code of Ethical Behavior" that is attached hereto as Exhibit 2 to provide an enforceable Code of Ethics for the City's elected and appointed officials;
- 3. Encourage the City Manager to promulgate Administrative Regulation 320 (Ethical Standards) to provide ethics guidance to City employees;
- 4. Request that the City Attorney develop a complaint form (including an affidavit to be signed under penalty of perjury), and develop the necessary enforcement mechanisms as set forth in the Code of Ethical Behavior;

- 5. Recognizing that some lead time will be needed to prepare high-quality ethics training and ethics guidance materials as required by the Public Service Ethics Program, stagger the initial training sessions for all of the City's approximately 175 elected and appointed officials and approximately 2,600 employees;
- 6. Direct the City Manager to take appropriate steps to put in place any additional procedures or forms required to have this ethics program in operation by no later than July 1, 2006; and
- 7. Review the entire ethics program on a periodic basis to ensure it remains fresh, accurate, and meaningful in serving the citizens and City officials and employees of Scottsdale.

Respectfully submitted by the City of Scottsdale Citizen Code of Ethics Task Force

Art De Cabooter, Chairman

Mart De Cabooter, Chairman

Jim Bruner

Jim Derouin

Margaret Dunn

Ned O'Hearn

Rita Saunders-Hawarnek

Dewey D. Selfade

FINAL AS ADOPTED BY THE TASK FORCE

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Respectfully submitted by the
City of Scottsdale
Citizen Code of Ethics Task Force

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| Respectfully submitted by the City of Scottsdale |
|--|
| Citizen Code of Ethics Task Force |
| Art DeCabooter, Chairman |
| Jim Bruner |
| Jim Derouin |
| Margaret Dunn |
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| Ned O'Hearn |
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| Dewey D. Schade |

City of Scottsdale ~ Public Service Ethics Program ~

To promote the highest standards of honesty and integrity in City government, ensure the quality of City government through adherence to ethical principles, and support the Mayor, members of the City Council, and members of every City board, commission, committee, task force, and other appointed advisory groups ("City officials") in their efforts to serve the public the best way possible, it is the policy of the City of Scottsdale to utilize the following comprehensive, three-part ethics program ("Ethics Program"):

- 1. Illumination. To highlight the ethical and legal standards against which City officials are held accountable, and as a prerequisite to participating in her or his first meeting and before January 31 every year thereafter that the official continues to serve the City, each City official shall:
 - a. Read the City of Scottsdale Code of Ethical Behavior, set forth in chapter 2 of the Scottsdale Revised Code, and sign a statement agreeing to comply with the City of Scottsdale Code of Ethical Behavior and all federal, state, and City laws; and
 - b. Complete the Scottsdale Personal Interest Disclosure Form, file it with the City Clerk, and be vigilant in honoring the legal requirement to avoid participating in any manner on behalf of the City of Scottsdale when a conflict exists between the official's City duties and the official's personal interests or the interests of the official's relatives, as defined by state law.
- 2. **Education.** To provide consistent and up-to-date guidance for City officials and employees and to protect the public trust, the City shall provide:
 - a. <u>Public Service Ethics Training</u> to the Mayor and members of the City Council no later than within thirty days of being sworn into office and to all other City officials no later than ninety days of being sworn into office; and once a year thereafter for as long as the City officials serve the City. Provide Public Service Ethics Training to employees within ninety days of their hiring and at least once a year thereafter for as long as they serve the City. Training sessions will be comprehensive and meaningful, such that they will:
 - Explain the letter and spirit of public service ethics laws regulating service to the City;
 - Use case studies or examples illustrating the application of the public service ethics laws to general behavior and specific situations; and
 - Identify the approved process to follow should City officials or employees have questions or concerns regarding their activities or those of others in City service.

Upon completion of each public service training program, attendees shall sign a statement confirming that they have completed the training and acknowledging that they are aware of the public service ethics laws and will

abide by them.

- b. Public Service Ethics Guidance Materials to all City officials and employees. The City Manager shall ensure that appropriate training and educational materials are provided to City officials and employees for use during the mandatory public service ethics training sessions, and that the training and educational materials used as part of the City's ethics training program are updated periodically to reflect any changes in applicable laws and to incorporate fresh illustrative examples. The City Attorney shall update annually, or more frequently if necessary, both the annotated matrix of public service ethics laws and the Personal Interest Disclosure Form, as set forth in the City of Scottsdale Code of Ethical Behavior, to ensure the documents present accurate information. The City Manager shall ensure that each City employee receives and agrees to follow the City's Administrative Regulation on ethical standards at new employee orientations.
- 3. Enforcement. To provide a clear and orderly process for filing, evaluating, and acting upon complaints alleging violations of ethics laws, the City shall adopt by ordinance enforcement procedures. The procedures shall define specific steps for filing complaints, including strict requirements related to identification of sources, documentation, and validation of claims. The procedures also shall describe separate processes for evaluating and acting upon complaints against (a) the Mayor and members of the City Council, and (b) appointed officials serving on boards, commissions, committees, task forces, and other appointed advisory groups.

ORDINANCE NO. 3675

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AMENDING ARTICLE II OF CHAPTER 2 OF THE SCOTTSDALE REVISED CODE, RELATING TO THE CITY COUNCIL, TO ADD DIVISIONS 3 AND 4, A CODE OF ETHICAL BEHAVIOR FOR CITY OFFICERS, AND AMENDING DIVISION 1 OF ARTICLE V OF CHAPTER 2 OF THE SCOTTSDALE REVISED CODE, RELATING TO BOARDS AND COMMISSIONS, TO ADD SECTION 2-243, MAKING THE CODE OF ETHICAL BEHAVIOR APPLICABLE TO MEMBERS OF CITY BOARDS AND COMMISSIONS.

WHEREAS, on September 20, 2005, the Scottsdale City Council, in response to a citizen's petition and after receiving a report from City staff, established the City of Scottsdale Citizen Code of Ethics Task Force ("Task Force"), charging it with recommending a code of ethics or ethics policy for the City Council and members of City boards and commissions; and

WHEREAS, on October 4, 2005, the City Council appointed seven Scottsdale citizens to serve as members of the Task Force; and

WHEREAS, over the four months following the appointment of the members of the Task Force it engaged in research, discussion, and debate about the best course of action for the City of Scottsdale, holding ten public meetings and receiving information and receiving comments from numerous citizens, who contributed to the final product by sharing their insights and perspectives; and

WHEREAS, on April 3, 2006, the Task Force presented its Final Report to the Mayor and City Council, which included several recommendations to promote ethical behavior in Scottsdale city government, one of which was to adopt as an ordinance the City of Scottsdale Code of Ethical Behavior, which was presented as a part of the Final Report; and

WHEREAS, the City Council believes that the adoption of the proposed Code of Ethical Behavior, along with the City of Scottsdale Public Service Ethics Program, relating to elected and appointed officials of the City; including the Mayor, City Council members, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups (collectively "City Officials"), is in the best interests of the City and its residents to promote ethical behavior by City Officials.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

<u>Section 1</u>. Article II of Chapter 2 of the Scottsdale Revised Code, relating to the City Council, is hereby amended to add Divisions 3 and 4, a Code of Ethical Behavior for City Officers, which shall read as follows, reserving sections 2-45 and 2-46:

DIVISION 3. CODE OF ETHICAL BEHAVIOR: GENERAL

Sec. 2-47. Definitions.

The following words, terms and phrases, when used in divisions 3 and 4 of this article of the Code shall have the meanings ascribed to them in this section, except where the context clearly

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indicates a different meaning:

City official means the mayor, members of the city council, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups.

City of Scottsdale Code of Ethical Behavior means the provisions set forth in divisions 3 and 4 of this article.

Ethics code means the City of Scottsdale Code of Ethical Behavior.

Sec. 2-48. Ethics policy.

- (a) It is the policy of the City of Scottsdale to uphold, promote, and demand the highest standards of ethical behavior from its mayor, members of the city council, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups. Honesty, integrity, fairness, and transparency of action are the hallmarks of public service in Scottsdale. Use of one's office or position for personal gain or inappropriate influence will not be tolerated.
- (b) All city officials shall obey and observe the letter and spirit of the constitution and laws of the United States of America, the constitution and laws of the State of Arizona, and the charter, laws, and policies of the City of Scottsdale applicable to city officials, including the city's ethics code. A listing of key public service ethics laws is shown below.¹
- (c) As a prerequisite for exercising any power of office, each city official is required to read and agree in writing to comply with the provisions of these laws, regulations, policies and this ethics code, as well as to participate annually in continuing education workshops regarding public service ethics.
- (d) Federal, state, and city laws provide the legal framework governing public service ethics. Within these laws the city has identified in sections 2-49 through 2-54 of this article the specific areas where clarification and emphasis of the intent and spirit of ethical standards are most warranted.

Sec. 2-49. Conflicts of interests.

- (a) Arizona law prevents local governments from imposing different conflicts of interests laws than state law. To provide guidance to city officials, Scottsdale interprets Arizona's conflicts of interests laws as follows.
- (b) A conflict of interests arises when a city official, a relative of that official, or an entity in which a city official has a substantial interest is actively engaged in an activity that involves the city's decision-making processes. "Decision-making processes" is broader than just voting and includes being involved with any aspects of any decisions the city makes, such as contracting, sales, purchases, permitting, and zoning.
- (c) When a conflict of interests arises, the city official involved must immediately refrain from participating in any manner in the city's decision-making processes on the matter as a city official, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the city council, or any city employee, contractor, agent,

See Exhibit A to this Ordinance No. 3675.

charter officer, or member of a city board, commission, committee, task force, other appointed advisory group, or agency (other than the city attorney when the city official is seeking legal advice regarding a possible conflict). In addition, within three business days the city official must declare the specific nature of the interest on the public record by updating her or his Personal Interest Disclosure Form in the city clerk's office.

- (d) During a public meeting when an agenda item in which a city official has a conflict of interests comes up for consideration, the city official shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.
- (e) In situations where a city official has a question about the applicability of this ethics code or the provisions of Arizona's conflicts of interests laws, the city charter, or any city ordinance, a ruling may be sought from the city attorney on whether an actual conflict of interests exists. City officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interests, but where active participation might raise the perception of undue influence or impropriety.
- (f) As a prerequisite for exercising any power of office, a city official is required to read, complete, and submit to the city clerk the Personal Interest Disclosure Form, shown below, before participating in her or his first meeting and before January 31 of every year of continued service to the city.

Sec. 2-50. Gifts; prohibited; exceptions.

- (a) City officials are prohibited from soliciting, receiving, or accepting gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the city's decision-making or permitting processes, except as exempted below. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest.
- (b) Exemptions include entertainment, hospitality (including meals), transportation, and token mementoes directly associated with events that an official is attending as a representative of the city. If any gift or personal benefit is permissible and exceeds \$25 in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, unless reporting is not required by the Code provision.

Sec. 2-51. Open government.

(a) The citizens of Scottsdale expect and deserve open government. Arizona has an official public policy "that meetings of public bodies be conducted openly" and that any doubt should always be resolved "in favor of open and public meetings" (A.R.S. § 38-431.09). The city council has adopted a formal goal of "Open and Responsive Government: Make government accessible, responsive and accountable so that decisions reflect community input and expectations" (Nov. 4, 2004 Mission and Goals). And Scottsdale citizens have voted in favor of a Vision Statement that

See Exhibit B to this Ordinance No. 3675.

Ordinance No. 3675 Page 4 of 9

"Scottsdale will be a leader in promoting open government processes that are accessible, responsive, and fair to all of its citizen participants" (City of Scottsdale General Plan 2001, page 87).

- (b) Therefore, city officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. Indeed, city officials are encouraged to employ a "mindset of openness" in conducting the affairs of the city and should be cautious before voting to hold a portion of a meeting in executive session. Moreover, city officials are reminded that any attempt to circumvent the Open Meeting Law such as by using technology, a "hub-and-spoke" scheme, or any other technique involving less than a quorum yet designed to communicate with a quorum of the public body can violate the Open Meeting Law. City officials also shall show no favoritism on who has access to or receives relevant information on matters under consideration or of general public interest.
- (c) The city attorney is encouraged to vigorously promote and enforce state laws regulating open meetings, and be proactive and assertive in ensuring strict adherence to those laws reflecting the city's "mindset of openness."

Sec. 2-52. Open meeting laws; executive sessions.

- (a) Arizona law recognizes that there are very narrowly limited occasions when the public's interests are best protected by the public body meeting in closed executive session. To honor the mindset of openness, city officials should consider that, although state law allows discussion of certain limited matters in executive session, closed meetings should be utilized as infrequently as possible and only in clearly compelling circumstances.
- (b) In addition to complying with the Open Meeting Law requirement that a majority of the public body vote in favor of meeting in closed executive session, Scottsdale public bodies will first introduce the item on the agenda, hear the need to go into executive session explained, receive the assent of the city attorney (or designee) that the matter would be an appropriate use of the executive session exception, and then vote to see if a majority of the public body agrees there is a legitimate need to go into executive session.
- (c) To ensure strict compliance with state law, the city attorney (or designee) shall be present at and actively protect the letter and spirit of the Open Meeting Law in all council meetings, all council executive sessions, and all executive sessions to be held by any other city board, commission, committee, task force, or other appointed advisory group. While in executive session, the city attorney (or designee) shall ensure that all discussions and consultations that take place fit within the bounds of what is allowed and appropriate under a strict and tight interpretation of Arizona's Open Meeting Law. All other questions and discussions related to that same issue shall be posed and addressed only in a public forum either prior to or following the executive session.
- (d) The city attorney (or designee) will not attend those portions of executive sessions involving personnel matters, pursuant to A.R.S. § 38-431.03(A)(1), relating to the city auditor, city clerk, city judge, associate city judges, city manager, or city treasurer, but may attend if requested to do so by the city council.
- (e) Before leaving the executive session, the city attorney (or designee) shall remind those present in the closed executive session that Arizona law (a) mandates that all discussions within and minutes of executive sessions are strictly confidential for all time, and (b) prohibits attendees from revealing to anyone, including family members, any part of any discussion that took place in executive session.

Sec. 2-53. Preservation and availability of public documents.

- (a) Consistent with Arizona's Public Records Laws, written communications between public officials and private citizens on matters explicitly involving the affairs of the city are considered public documents. Such written communications shall be preserved in compliance with the city's document retention policy and made available for review upon request.
- (b) "Written communications" includes city-related e-mail messages and attachments originating from or received by elected or appointed officials on any publicly or privately owned equipment at city half, the city official's place of employment, private residence, or remote locations. Destruction of such communications prior to the expiration of the time period specified in the city's document retention policy is prohibited.
- (c) The city's electronic messaging systems and electronic communications systems (including telephones) are to be used for official city business only, except for limited personal uses (e.g., asking a person to lunch or a social event, checking on the welfare of family members, scheduling or canceling a doctor's appointment). City officials are prohibited from using the city's official e-mail service for commercial purposes or other inappropriate uses.

Sec. 2-54. Undue influence on subordinates.

- (a) Under the city's charter, administrative authority is vested solely in the city manager. Members of the city council may make inquiries to city staff. Members of the city council may not interfere with the city manager's authority, however, by giving orders or explicit directions or requests, publicly or privately, regarding city matters to any subordinates of the city manager, and they shall not attempt to exert influence on the city manager on issues relating to the hiring or removal of persons employed by the city.
 - (b) All city officials shall respect the orderly lines of authority within city government.

DIVISION 4. CODE OF ETHICAL BEHAVIOR: ENFORCEMENT

Sec. 2-55. Filing complaints.

- (a) <u>Contents</u>. Any person who believes a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in division 3 of this article, above, or violated any state or city law may file a sworn complaint with the city attorney identifying:
 - (1) The complainant's name, address, and telephone number;
 - (2) The name and position of the city official who is the subject of the complaint;
 - (3) The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated;
 - (4) A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
 - (5) All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
 - (6) A list of witnesses, what they may know, and their contact information, if known; and

(7) If the alleged violation occurred more than ninety days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

- (b) <u>Time for filing</u>. A complaint must be filed on or before the 365th day after the violation is alleged to have occurred or the 90th day after the violation was discovered, whichever date is earlier.
- (c) <u>False or frivolous complaints</u>. A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. If after reviewing an ethics complaint it is determined that a swom complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, then the city attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A city official who seeks to take civil action regarding any such complaint shall do so at her or his expense.
- (d) <u>Elections complaints</u>. Any complaints relating to city elections shall be filed with or referred to the city clerk for review and disposition as provided by law.
- Sec. 2-56. Complaints against members of boards, commissions, committees, task forces, and other appointed advisory groups.
- (a) <u>Initial screening of complaints</u>. The city attorney shall review each complaint filed alleging a violation by a member of a city board, commission, committee, task force, and other appointed advisory group and within fifteen days either:
 - (1) Return it for being incomplete;
 - (2) Dismiss it for being untimely;
 - (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of the ethics code or any laws;
 - (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the city attorney determines the complaint was false, misleading, frivolous, or unsubstantiated;
 - (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
 - (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, take action as set forth below.

In all circumstances, the city attorney shall simultaneously notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

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(b) Review and findings. For ethics complaints alleging violations of the city's Code of Ethical Behavior or a city law that proceed for additional review, the city attorney shall investigate the allegations and, within thirty days (unless the city attorney requests a fifteen day extension that is granted in writing by the mayor or vice mayor), submit to the city council, the complainant, the official who is the subject of the complaint, and the city clerk a report with findings of fact, conclusions of law, and a recommendation. The city council shall consider the city attorney's report at a public meeting. If the city council finds an ethical violation, then it may remove the member from the city board, commission, committee, task force, or other appointed advisory group. In resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of wrongdoing.

Sec. 2-57. Complaints against the mayor and members of the city council.

- (a) Independent ethics reviewers. The city shall use independent, non-city personnel to handle ethics complaints lodged against the mayor and members of the city council (and to handle any ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group if the city attorney would have a conflict of interests in handling that complaint). The city attorney, in compliance with applicable provisions of the city Procurement Code, shall select a pool of ten to twelve individuals who could serve as the city's independent ethics reviewers to handle ethics complaints lodged against the mayor and members of the city council. To be eligible for selection, individuals must be retired federal or state judges or faculty members at the law schools at Arizona State University or the University of Arizona who do not live in Scottsdale and do not work for firms or employers that regularly have business in Scottsdale or represent clients in Scottsdale. In the event the city attorney cannot select a sufficient number of eligible people who can perform the necessary services, then the city attorney may complete the pool by selecting independent qualified attorneys who do not live or office in Scottsdale and whose firms or employers do not regularly have business in Scottsdale or represent clients in Scottsdale. At least two-thirds of the independent ethics reviewers shall be retired judges or law school faculty members. Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law. Each year the city attorney shall nominate one person from the independent ethics reviewers to serve as the city's "independent ethics officer," and the other independent ethics reviewers will either confirm the nominee or select another reviewer from the pool. The independent ethics officer shall not serve in that role for more than one consecutive year.
- (b) <u>Initial screening of complaints</u>. The city attorney shall immediately transfer any complaint filed against the mayor or members of the city council to the city's independent ethics officer, who will conduct the initial screening of the complaint and within fifteen days issue a report of findings and conclusions and recommend that the city attorney handle the complaint as follows:
 - (1) Return it for being incomplete;
 - (2) Dismiss it for being untimely;
 - (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of the ethics code or any laws;
 - (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer determines the complaint was false, misleading, frivolous, or unsubstantiated;
 - (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
 - (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of

Ordinance No. 3675 Page 8 of 9

the city's Code of Ethical Behavior or a city law, refer the matter to an independent ethics panel for further action as set forth in subsection (c) below.

In all circumstances, the city attorney shall follow the independent ethics officer's recommendation and notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(c) Review and findings. If the independent ethics officer recommends referral of a complaint to an independent ethics panel for further review, then the city attorney shall immediately transfer the complaint to an ethics panel consisting of three independent ethics reviewers selected by the independent ethics officer from the pool of eligible individuals. The members of the ethics panel shall investigate the complaint and report to the city council, the complainant, the official who is the subject of the complaint, the city attorney, and the city clerk its findings of fact and conclusions of law within sixty days (unless the panel requests a thirty day extension that is granted in writing by the independent ethics officer). The city council shall consider the ethics panel's report at a public meeting and either accept or reject the ethics panel's report as submitted.

Sec. 2-58. Review of complaints.

- (a) <u>Presumptions</u>. The city attorney's recommendation to refer a complaint for further review does not mean that any of the complaint's allegations are true or that any city official has violated this ethics code or any law.
- (b) <u>Procedures</u>. The city attorney will adopt written rules of procedure to govern the review process, including the right of a city official against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.
- (c) Expedite. The timelines for handling complaints set forth above set the outer limits. Reviewers and decision-makers are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the city officials against whom complaints have been filed.
- (d) <u>Public information regarding action taken and reports issued</u>. On the same day the city attorney notifies a complainant of the action taken on a complaint as set forth in subsections 2-56(a) and 2-57(b) of this Code, above, and on the same day the city attorney issues a report to the city council regarding complaints against members of city boards, commissions, committees, task forces, or other appointed advisory groups as set forth in subsection 2-56(b) of this Code, above, or an ethics panel issues a report to the city council regarding complaints against the mayor or a member of the city council as set forth in subsection 2-57(c) of this Code, above, copies of those notices and reports shall be filed with the city clerk and made available to the public as public records.
- (e) <u>Inapplicable provisions</u>. The provisions of section 1-8 of this Code are inapplicable to divisions 3 and 4 of this article.

Sec. 2-59. Effective date; prospective application.

Divisions 3 and 4 of this article II of chapter 2 of this Code are effective on and after July 1, 2006. The provisions of these divisions shall apply prospectively only to acts that are alleged to have occurred on or after the effective date.

Ordinance No. 3675 Page 9 of 9

<u>Section 2.</u> Division 1 of Article V of Chapter 2 of the Scottsdale Revised Code, relating to boards and commissions is hereby amended to add section 2-243, relating to the Code of Ethical Behavior, which shall read as follows:

Sec. 2-243. Code of Ethical Behavior

The provisions of the City of Scottsdale Code of Ethical Behavior, as set forth in Divisions 3 and 4 of Article II of this chapter, apply to all members of city appointive boards and commissions.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 2nd day of May 2006.

Mayor

CITY OF SCOTTSDALE, an Arizona municipal corporation,

ATTEST:

Carolyn Jagger City Clerk

APPROVED AS TO FORM:

Deborah W. Robberson

City Attorney

City of Scottsdale

(Mayor, City Council Members, and Members of All City Boards, Commissions, and Committees) Sampling of Public Service Ethics Laws Applicable to City Officials

| Topic | Arizona | Scottsdale | Arizona Scottsdale General Summary | Penalties & |
|---------------------------|--------------------|---------------------|--|------------------------|
| | Law | Law | | Sanctions ² |
| Bribery | A.R.S. §§ | | It is illegal for you to solicit, accept, or agree to accept any benefit upon an | felony |
| | 13-2002; 38-444 | | understanding that it may influence your official conduct, or to ask for or receive any gratuity of reward (or promise thereof) for your official act. | |
| Conflicts of Interests | A.R.S. §§ 38-501 | Charter Art. 8, § 6 | If you or any relative could benefit from you taking official action, then you | felony or |
| (general) | through -511 | | must (1) disqualify yourself by not participating "in any manner" - not | misdemeanor, |
| | | | voting, not discussing, not anything, and (2) disclose that personal interest. | more |
| Contracting with the City | A.R.S. §§ 38-503, | Charter Art. 8, § 5 | If you or any relative has a substantial interest in "any contract, sale, | felony or |
| | 36-1406, -1477 | | purchase or service" to the City, then you must disclose that interest and | misdemeanor; |
| | | | "refrain from voting upon or participating in any manner." | cancel contract |
| Conduct After | A.R.S. § | | For 12 months after your City service, you cannot represent another person | felony or |
| Leaving City Position | 38-504(A) | | for compensation before the City in connection with any matter in which | misdemeanor |
| ("Anti-Revolving Door") | | | you personally participated in a substantial and material way. | |
| Confidential Information | A.R.S. § | | During and for two years after your City service, it is illegal for you to | felony or |
| (Disclosure/Use of) | 38-504(B) | | disclose or use for personal profit any confidential information you learned | misdemeanor; |
| | | | in the course of your duties. | more |
| Discrimination | Constitutions, | | It is illegal to discriminate based on race, color, gender, national origin, | attorneys fees, |
| જ | plus statutes; | | religion, age, or physical or mental disability; plus, in your Loyalty Oath | damages, more |
| Favoritism | ARS § 38-231(G) | | you pledged to "faithfully and impartially discharge the duties of office." | |
| E-mail | A.R.S. §§ 39-121; | | Your e-mail communications are subject to the Public Records Law, and | attorneys fees, |
| | 38-431 et seq. | | improper e-mail involving a quorum of the members of a public body may | costs, more |
| | | | Violate the Open Meeting Law. | |
| Employment of Relatives | A.R.S. § 38-481 | S.R.C. § 14- | You may not be involved in the appointment or hiring of a relative (which is | misdemeanor |
| ("Nepotism") | | 134(b) | defined broadly to include your parents, siblings, spouse, children, | |
| | | (Council only) | grandchildren, grandparents, and all in-laws). | |
| Employment – | A.R.S. §§ | | If you engage in certain discussions about future employment, then it might | felony or |
| Discussion of | 38-503, | | trigger bribery or conflicts of interests laws. | misdemeanor |
| Future Employment | -504(C) | | | |

CAUTION: These brief descriptions are provided for quick introductory purposes and cannot and do not present the full scope of these laws.

removal from office. For example, a City official convicted of a felony may be fined up to \$150,000 for each violation and sent to prison for several years. A.R.S. §§ 13-801, payment of costs and attorneys fees - both prosecution and defense), cancellation of contracts, public embarrassment (for the official and her or his family and employer), and ² Violations of these laws may expose a City official to a variety of sanctions, including criminal penalties, personal financial liability (for damages and fines, as well as -701. Conviction of a misdemeanor may result in a fine up to \$2,500 for each violation and a jail sentence of up to six months. A.R.S. §§ 13-802, -707. This information is presented not to scare City officials, but to help them by underscoring the seriousness of conducting the public's business properly.

| depends on | felony or misdemeanor | misdemeanor | felony or misdemeanor | I I I SUCITIVATION | ethics code investigation and | felony or misdemeanor | action null & void; | felony | range: attorneys fees | felony | felony or misdemeanor | felony or misdemeanor | felony |
|---|---|---|--|--|---|--|--------------------------------------|--|--|---|---|--|---|
| Certain outside employment could trigger conflicts of interests laws. | During your City service, it is illegal for you to represent another person for compensation in connection with any matter in which you will personally participate in a substantial and material way as a City official. | It is illegal for the Mayor or a Council member to accept from a "compensated lobbyist" "an expenditure or single expenditure for entertainment" (defined broadly to mean not only attending any sporting or cultural event, but also participating in any cultural or sporting event, such as golf). | It is illegal for any City official to receive any money (except the salaries the City pays the Mayor and Council members) or anything of value for any service rendered in connection with performing their official duties. It is illegal for Council members to fail to file, or knowingly file an | incomplete personal financial disclosure statement (which are designed to help you identify and avoid potential conflicts of interests). | no giffs, gratuities, or other benefits or items of value shall be solicited" and "[g]iffs and other personal benefits or items of value shall not be accepted if acceptance could be…construed as an attempt to exert improper influence." Giffs worth more than \$25 must be reported to the City Clerk | City officials may use City resources only to the extent those resources are available to the public (e.g., if the public is charged 20ϕ page for copying, then a City official must pay the same). Otherwise, it is theft (see below). | | | and recognize that special rules and obligations apply, including the City's procurement processes. Arizona law has a strong presumption that records shall be open to public inspection, but with hundreds of exemptions, you should seek immediate help from the City Attorney if you get a public records request. | It is illegal to "tamper with a public record" by making a false document purporting to be a public record, altering or making a false entry, destroying, removing, hiding, or otherwise impairing a public record. | It is illegal to use or attempt to use your official position to get any valuable thing or benefit that you would not ordinarily get. (See also "Bribery" and "Gifts" above.) | Unauthorized (such as personal) use of City resources (facilities, equipment, personnel, supplies) can be considered "theft," which is the taking or unauthorized use of another person's property (including the City's). | Unauthorized use of a City vehicle can constitute "unlawful use of means of transportation," and submitting a false travel or expense report is "tampering with a public record." |
| | | | S.R.C. § 14- 135(c) S.R.C. §§ 2-76 | thru -78 | S.K.C. § 14-135 (b), (c), (d) | | Charter Art.2 § 12 (Council only) | Charter Art.8 § 3 | Charter Art.13 § 1 | | S.R.C. § 14-135 | | |
| A.R.S. § 38-505 | A.R.S. § 38-504 | A.R.S. § 41-1232.08(B) [only applies to City Council] | A.R.S. § 38-505 A.R.S. § 38-545 | (which requires City adopt same) | | A.R.S. §§ 13-1802, -2310, -2316 | A.R.S. § 38-431 through -431.09 | A.R.S. § 9-500.14 A.R.S. § 35-301 | A.R.S. § 39-121, et seq., plus more | A.R.S. § 13-2407 | A.R.S. § 38-504(C) | A.R.S. § 13-1802 | A.R.S. §§ 13-1803, -2407 |
| Employment – Incompatible | Employment – Representing Others Before the City | Entertainment (attending or participating in a cultural or sporting event) | Extra Compensation Financial Disclosures | [NOTE: Council only] | Things of Value | Misuse of Public Resources (see "Theft" below) | Open Meetings | Political Activities Public Monies | Public Records – Access to | Public Records – Tampering with | Solicitation of Gifts & Things of Value | Theft of City Property, Resources, or Services | Iravel |

| Undue Influence [NOTE: Council only] | Charter Art.2 § 17 (Council only) | 2r Art.2 § 17 Council members "shall deal with the administrative service solely through uncil only) the city manager" and shall not direct or request the City Manager appoint | ethics code investigation |
|---|-----------------------------------|---|---------------------------|
| | | or remove any city employee. | and report |

City of Scottsdale Personal Interest Disclosure Form

Pursuant to the City of Scottsdale Code of Ethical Behavior, all City officials (the Mayor, members of the City Council, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups), before participating in their first meeting and before January 31 every year thereafter that they serve the City, must complete and submit a Personal Interest Disclosure Form to the City Clerk's Office. The purpose of the form is to help City officials by alerting and reminding them of their need to avoid participating in any manner on behalf of Scottsdale when a conflict arises between their official City duties and their personal interests (or the interests of their relatives).

Two definitions are very important because violating Arizona's conflicts of interests laws is a criminal offense and can lead to serious consequences.

- 1. Arizona law requires that if a public officer of a public agency, or her or his relative has a substantial interest in any contract, sale, purchase or service to the public agency, or an official decision of the public agency, then that officer "shall make known that interest in the official records of the public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee" regarding that matter. (A.R.S. § 38-503). Substantial interest means a pecuniary (money/financial) or propriety (property) interest, direct or indirect, except certain specific, limited remote interests listed in the statute. (A.R.S. § 38-502). By listing "voting" and "otherwise participating in any manner" separately, the Legislature has made clear that if you have a conflict, then you must immediately refrain from taking any action in your official position; you may not do anything vote, talk, discuss, write, wink, or nod to try to influence the decision or any decision-makers.
- 2. The definition of relative is quite sweeping, and includes your "spouse, child, child's child [grandchildren], parent, grandparents, brother or sister [and step-brother or step-sister], and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

If after you complete this form another substantial interest surfaces that was not anticipated, then you are obligated to immediately refrain from participating in the decision-making process and, within three business days, update this form to disclose the interest in the City Clerk's Office. If you have any questions, please contact the City Attorney's Office with as much lead time as possible.

- 1. <u>Identify the decision or other matter in which you or a relative may have a substantial interest.</u> (Attach another page if more space is needed.)
- 2. <u>Describe each substantial interest referred to above</u>. (Attach another page if more space is needed.)

| Statement of Disqualification To avoid any possible conflict of interests identified above. | s, I will refrain from participating in a | any manner in the matter(s) |
|---|---|-----------------------------|
| Name (please print) | Signature | Date |
| Position in the City of Scottsdale | | |

EXHIBIT B

SCOTTSDALE REVISED CODE

Sec. 2-47. Definitions.

The following words, terms and phrases, when used in divisions 3 and 4 of this article of the Code shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City official means the mayor, members of the city council, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups.

City of Scottsdale Code of Ethical Behavior means the provisions set forth in divisions 3 and 4 of this article.

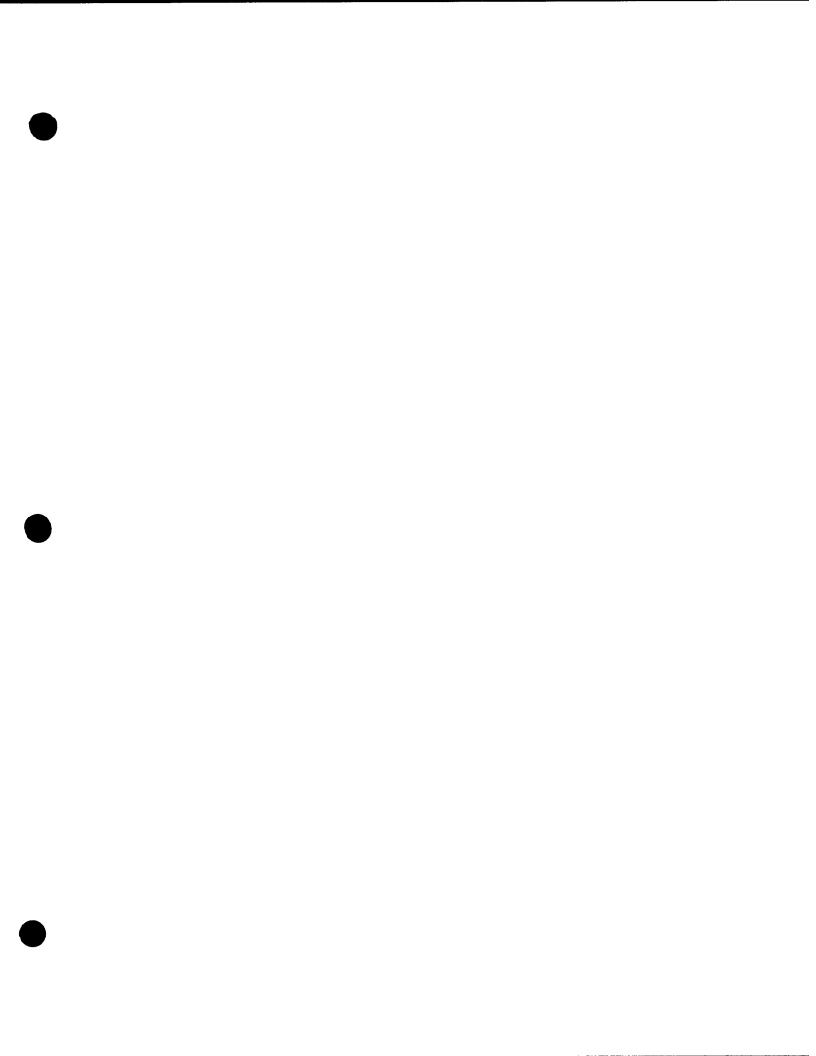
Ethics code means the City of Scottsdale Code of Ethical Behavior.

SCOTTSDALE REVISED CODE

Sec. 2-48. Ethics policy.

- (a) It is the policy of the City of Scottsdale to uphold, promote, and demand the highest standards of ethical behavior from its mayor, members of the city council, and individuals appointed to serve on the city's boards, commissions, committees, task forces, and other appointed advisory groups. Honesty, integrity, fairness, and transparency of action are the hallmarks of public service in Scottsdale. Use of one's office or position for personal gain or inappropriate influence will not be tolerated.
- (b) All city officials shall obey and observe the letter and spirit of the constitution and laws of the United States of America, the constitution and laws of the State of Arizona, and the charter, laws, and policies of the City of Scottsdale applicable to city officials, including the city's ethics code. A listing of key public service ethics laws is shown below.¹
- (c) As a prerequisite for exercising any power of office, each city official is required to read and agree in writing to comply with the provisions of these laws, regulations, policies and this ethics code, as well as to participate annually in continuing education workshops regarding public service ethics.
- (d) Federal, state, and city laws provide the legal framework governing public service ethics. Within these laws the city has identified in sections 2-49 through 2-54 of this article the specific areas where clarification and emphasis of the intent and spirit of ethical standards are most warranted.

See Exhibit A to this Ordinance No. 3675.



ETHICS POLICY ACKNOWLEDGEMENT AND AGREEMENT SCOTTSDALE REVISED CODE SECTION 2-48(C)

| | (c) As a prerequisite for exercising any power of office, each |
|-----|--|
| cit | ty official is required to read and agree in writing to comply with th |
| pr | ovisions of these laws, regulations, policies and this ethics code, as |
| W | ell as to participate annually in continuing education workshops |
| re | garding public service ethics. |

Scottsdale Revised Code Section 2-48(c) provides:

By my signature below, I _______ acknowledge and agree that I have been provided with a copy of City of Scottsdale Ordinance No. 3675 (Scottsdale Revised Code Sections 2-47 through 2-58, and 2-243), which constitutes the City of Scottsdale Code of Ethical Behavior ("Ethics Code"), including Exhibit A "City of Scottsdale—Sampling of Public Service Ethics Laws Applicable to City Officials" and Exhibit B "Public Interest Disclosure Form".

By my signature below, I acknowledge that I have read and understand the Ethics Code. I agree that I will comply with the constitution and laws of the United State of America, the constitution and laws of the State of Arizona, and the charter, laws, regulations and policies of the City of Scottsdale, including the Ethics Code. I further agree to participate annually in continuing education workshops, regarding public service ethics, as required by the Ethics Code.

| Signature | Elected/appointed position |
|--------------|----------------------------|
| Printed name | Date |

SCOTTSDALE REVISED CODE

Sec. 2-49. Conflicts of interests.

- (a) Arizona law prevents local governments from imposing different conflicts of interests laws than state law. To provide guidance to city officials, Scottsdale interprets Arizona's conflicts of interests laws as follows.
- (b) A conflict of interests arises when a city official, a relative of that official, or an entity in which a city official has a substantial interest is actively engaged in an activity that involves the city's decision-making processes. "Decision-making processes" is broader than just voting and includes being involved with any aspects of any decisions the city makes, such as contracting, sales, purchases, permitting, and zoning.
- (c) When a conflict of interests arises, the city official involved must immediately refrain from participating in any manner in the city's decision-making processes on the matter as a city official, including voting on the matter or attending meetings with, having written or verbal communications with, or offering advice to any member of the city council, or any city employee, contractor, agent, charter officer, or member of a city board, commission, committee, task force, other appointed advisory group, or agency (other than the city attorney when the city official is seeking legal advice regarding a possible conflict). In addition, within three business days the city official must declare the specific nature of the interest on the public record by updating her or his Personal Interest Disclosure Form in the city clerk's office.
- (d) During a public meeting when an agenda item in which a city official has a conflict of interests comes up for consideration, the city official shall state publicly that he or she has a conflict, recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.
- (e) In situations where a city official has a question about the applicability of this ethics code or the provisions of Arizona's conflicts of interests laws, the city charter, or any city ordinance, a ruling may be sought from the city attorney on whether an actual conflict of interests exists. City officials are strongly encouraged to avoid involvement in situations where a ruling declares no technical conflict of interests, but where active participation might raise the perception of undue influence or impropriety.
- (f) As a prerequisite for exercising any power of office, a city official is required to read, complete, and submit to the city clerk the Personal Interest Disclosure Form, shown below,² before participating in her or his first meeting and before January 31 of every year of continued service to the city.

See Exhibit B to this Ordinance No. 3675.

SCOTTSDALE CITY CHARTER ARTICLE 8, SECTION 6

Sec. 6. Conflict of interest

All elected and appointed officers of the city, including members of boards and commissions; whether established by charter, ordinance, resolution, state constitution or statute; and all city employees shall be subject to the conflict of interest laws of the state of Arizona.

ARTICLE 8. CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

§ 38-501. Application of article

- **A.** This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards
- **B.** Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.
- **C.** Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 1, eff. Oct. 1, 1978; <u>Laws 1992, Ch. 140, § 1.</u>

§ 38-502. Definitions

In this article, unless the context otherwise requires:

- "Compensation" means money, a tangible thing of value or a financial benefit.
- 2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
- 3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.
- 4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
- 5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
- 6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.

- (c) The state, county and incorporated cities or towns and any other political subdivisions.
- 7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3, [FN1] or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
- 8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
- 9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.
- 10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.
 - (i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.
 - (iii) A public agency except if it is the same governmental entity.

- (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.
- 11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1973, Ch. 116, § 6; Laws 1974, Ch. 199, § 1; Laws 1977, Ch. 164, § 17; Laws 1978, Ch. 151, § 7; Laws 1978, Ch. 208, § 2, eff. Oct. 1, 1978; Laws 1979, Ch. 145, § 36; Laws 1992, Ch. 140, § 2.

[FN1] Section 41-722 et seq.

§ 38-503. Conflict of interest; exemptions; employment prohibition

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- **B.** Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
- C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:
 - 1. A school district governing board may purchase, as provided in §§ 15-213 and 15-323, supplies, materials and equipment from a school board member.
 - 2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.
- **D.** Notwithstanding subsections A and B of this section and as provided in §§ 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 3, eff. Oct. 1, 1978; Laws 1980, Ch. 170, § 3; Laws 1986, Ch. 17, § 3; Laws 1986, Ch. 246, § 1; Laws 1987, Ch. 138, § 2.

§ 38-504. Prohibited acts

- A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.
- **B.** During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.
- C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Added by Laws 1974, Ch. 199, § 3. Amended by Laws 1995, Ch. 76, § 5; Laws 1999, Ch. 40, § 1.

§ 38-505. Additional income prohibited for services

- A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.
- **B.** This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Added by Laws 1974, Ch. 199, § 3.

§ 38-506. Remedies

A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

- **B.** Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- **C.** The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978. Amended by Laws 1992, Ch. 140, § 3.

§ 38-508. Authority of public officers and employees to act

- A. If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.
- **B.** If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978. Current through legislation effective May 11, 2006.

§ 38-510. Penalties

A. A person who:

- 1. Intentionally or knowingly violates any provision of $\S\S 38-503$ through 38-505 is guilty of a class 6 felony.
- 2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.
- **B.** A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.
- C. It is no defense to a prosecution for a violation of §§ 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.
- **D.** It is a defense to a prosecution for a violation of §§ 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-511. Cancellation of political subdivision and state contracts; definition

- A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
- **B.** Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by § 37-289 and other lawful provisions of the lease.
- C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.
- **D.** The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

- E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.
- **F.** Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.
- **G.** For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22. [FN1]

Added as § 38-507 by Laws 1978, Ch. 189, § 1. Renumbered as § 38-511. Amended by Laws 1985, Ch. 155, § 1; Laws 1988, Ch. 169, § 1; Laws 1992, Ch. 45, § 1.

[FN1] Sections 48-1501 et seq., 48-1701 et seq., 48-1901 et seq., 48-2301 et seq., 48-2601 et seq., 48-2901 et seq., 48-3701 et seq.

<u>City of Scottsdale</u> Personal Interest Disclosure Form

Pursuant to the City of Scottsdale Code of Ethical Behavior, all City officials (the Mayor, members of the City Council, and members of all City boards, commissions, committees, task forces, and other appointed advisory groups), before participating in their first meeting and before January 31 every year thereafter that they serve the City, must complete and submit a Personal Interest Disclosure Form to the City Clerk's Office. The purpose of the form is to help City officials by alerting and reminding them of their need to avoid participating in any manner on behalf of Scottsdale when a conflict arises between their official City duties and their personal interests (or the interests of their relatives).

Two definitions are very important because violating Arizona's conflicts of interests laws is a criminal offense and can lead to serious consequences.

- 1. Arizona law requires that if a public officer of a public agency, or her or his relative has a substantial interest in any contract, sale, purchase or service to the public agency, or an official decision of the public agency, then that officer "shall make known that interest in the official records of the public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee" regarding that matter. (A.R.S. § 38-503). Substantial interest means a pecuniary (money/financial) or propriety (property) interest, direct or indirect, except certain specific, limited remote interests listed in the statute. (A.R.S. § 38-502). By listing "voting" and "otherwise participating in any manner" separately, the Legislature has made clear that if you have a conflict, then you must immediately refrain from taking any action in your official position; you may not do anything vote, talk, discuss, write, wink, or nod to try to influence the decision or any decision-makers.
- 2. The definition of relative is quite sweeping, and includes your "spouse, child, child's child [grandchildren], parent, grandparents, brother or sister [and step-brother or step-sister], and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

If after you complete this form another substantial interest surfaces that was not anticipated, then you are obligated to immediately refrain from participating in the decision-making process and, within three business days, update this form to disclose the interest in the City Clerk's Office. If you have any questions, please contact the City Attorney's Office with as much lead time as possible.

- 1. <u>Identify the decision or other matter in which you or a relative may have a substantial interest.</u> (Attach another page if more space is needed.)
- 2. <u>Describe each substantial interest referred to above</u>. (Attach another page if more space is needed.)

| Statement of Disqualification To avoid any possible conflict of intelidentified above. | rests, I will refrain from participating in a | any manner in the matter(s) |
|--|---|-----------------------------|
| Name (please print) | Signature | Date |
| Position in the City of Scottsdale | | |



DECLARATION OF CONFLICT OF INTEREST OR PERSONAL INTEREST

| NAME: | |
|--|---|
| PUBLIC BODY: | |
| DATE OF PUBLIC MEETING: | AGENDA ITEM NO.: |
| DESCRIPTION OF ITEM: | |
| ☐I declare that I have a "substantial interest matter, as provided in A.R.S. § 38-501 et seconflict of interest in the decision or matter | q., and, therefore, declare that I have a |
| Describe the substantial interest held by you or | r your relative(s) referred to above: |
| | |
| ☐I don't believe that I have a substantial in decision or matter and, therefore, do not ha Arizona law, but I believe that my active par decision or matter might raise the perception | ve a conflict of interest as provided by ticipation in the above-referenced |
| Explain: | |
| To avoid a conflict of interest or the percept as indicated above, I will refrain from partic decision(s) or matter(s) identified above. | |
| Signature | Date Signed |

PLEASE NOTE: Completion and filing of this form with the City Clerk's Office is not, by itself, sufficient for a public officer to meet the requirements of the Conflict of Interest law and Code of Ethical Behavior (S.R.C. § 2-47 et seq.). To complete the requirements the public officer must state publicly at the meeting of the public body that he or she has a conflict of interest, or that participation might raise the perception of undue influence or impropriety; then recuse himself or herself, and leave the room while the matter is being discussed and acted upon by others on the public body.

A copy of this form will be filed as a supplement to the public officer's Personal Interest Disclosure form.

SCOTTSDALE REVISED CODE

Sec. 2-50. Gifts; prohibited; exceptions.

- (a) City officials are prohibited from soliciting, receiving, or accepting gifts of any kind from anyone who is engaged in a general practice or specific situation that involves the city's decision-making or permitting processes, except as exempted below. The term "gifts of any kind" includes money, services, loans, travel, entertainment, hospitality (including meals), promises of any future gifts, or anything of value that might be construed as an attempt to create a more favorable relationship than that enjoyed by any other citizen, including: (a) the purchase, sale, or lease of any real or personal property by the city official, that official's relative, or an entity in which that official has a financial interest at a value below or above that available to the general public, and (b) employment and/or services, contracts, direct or indirect, by a city official, that official's relative, or an entity in which that official or relative has a financial interest.
- (b) Exemptions include entertainment, hospitality (including meals), transportation, and token mementoes directly associated with events that an official is attending as a representative of the city. If any gift or personal benefit is permissible and exceeds \$25 in value, then the city official must declare it to the city clerk as provided in the Scottsdale Revised Code Section 14-135, unless reporting is not required by the Code provision.

SCOTTSDALE REVISED CODE

Sec. 14-135. Gifts and gratuities.

- (a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.
- (b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.
- (c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.
- (d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.
- (e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of twenty-five dollars (\$25.00) in value, is accepted, it must be declared in writing with the city clerk's office within five (5) business days of acceptance. The declaration shall be made on a form designated by the clerk.
- (f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):
 - (1) Admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
 - (2) Reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
 - (3) Gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
 - (4) Items received and donated to a charitable organization.

(Ord. No. 1837, § 1(Art. 8, § 805), 6-15-87; Ord. No. 2868, § 41, 3-4-96; Ord. No. 3264, § 1, 10-4-99)

| Event | Date Site |
|---|---|
| Matching Event Advertising Funding | |
| 51st Annual Scottsdale Arabian Horse Show | February 17-26, 2006 WestWorld |
| Arizona Bike Week | March 31 - April 9, 2006 WestWorld |
| Sun Country Circuit Quarter Horse Show | January 27 - February 4, 2006 WestWorld |
| 35th Anniversary Barrett-Jackson Collector Car Auctio | January 14 - 22, 2006 WestWorld |
| Celebration of Fine Art | January 14 - March 26, 2006 Scottsdale Road and Union Hills, SE comer |
| FBR Open | January 30 - February 5, 2006 TPC |
| PF Chang's Rock n' Roll Marathon | January 15, 2006 Phx, Scdl, Tempe |
| Russo and Steel Collector Automobile in Scottsdale | January 19 - 21, 2006 Scottsdale and Mayo Raods, SE Corner |
| Scottsdale Classic Futurity and Quarter Horse Show | October 6 - 15, 2005 WestWorld |
| Scottsdale Culinary Festival | April 18 - 23, 2006 Various Scdl Resorts and Scdl Civic Center Ma |

City of Scottsdale Declaration of Gifts Form

To be filed in the City Clerk's office within five business days after acceptance of an applicable gift, personal benefit or other item in excess of \$25.00 in value, pursuant to Scottsdale City Code section 14-135 (printed on reverse side).

| Check Relevant I | iling Category | : | | |
|-------------------------------|-----------------|-----------------------------|---------------|-------------------|
| Employee | | Public Officer/City Office | cial | |
| Name: | | | | |
| Public body you a applicable. | are member of | (i.e. city council, board o | r commissio | on, etc.), if |
| Phone: (preferred | I number for ac | ccess): | | |
| Department (if ap | plicable): | | | |
| Description of Gif | t(s) and Relate | ed Comments: | 714 | |
| | | | | |
| Date Received: _ | | Face Value of Gift(s): | | _ (if applicable) |
| Source of Gift(s) | [Name of indiv | vidual(s) and organizatio | n(s), if appl | icable]: |
| | | | | |
| Submitted by: | (Signati | ure) | Date: | |

Scottsdale Revised Code Section 14-135 Gifts and Gratuities

Sec. 14-135. Gifts and Gratuities.

- (a) The provisions of this section are intended to promote ethical conduct and public trust in the integrity of Scottsdale municipal government and therefore, shall apply to all city employees, elected and appointed officers, including members of boards and commissions, in the course of their employment or the performance of their official duties with the city.
- (b) No gifts, gratuities, and other benefits or items of value shall be solicited by a city employee or officer for personal benefit.
- (c) Monetary gratuities, tips, honoraria, or other payments for services rendered for performing city employment or official city duties, other than compensation from the city or that which is otherwise provided by law or city policy, shall not be accepted.
- (d) Gifts and other personal benefits or items of value shall not be accepted if acceptance could reasonably be construed as an attempt to exert improper influence on any municipal decision or action, or as a reward for any official action.
- (e) If, after consideration of the ethical standards expressed in this policy, a gift, personal benefit, or other item in excess of \$25.00 in value, is accepted, it must be declared in writing with the city clerk's office within five business days of acceptance. The declaration shall be made on a form designated by the clerk.
- (f) The following items reflect legitimate public duties or purposes, or are otherwise not considered gifts to an employee or officer for personal benefit that must be declared pursuant to 14-135(e):
 - (1) admission to events which are sponsored or funded in whole or in part by the city, if furnished by the city or sponsor(s) of such events;
 - (2) reasonable hosting, including meals and refreshments, travel, and related expenses, furnished in connection with official speaking engagements, ceremonies or other work-related appearances on behalf of the city, when public or civic purposes are served;
 - (3) gifts of goodwill or other tokens of appreciation accepted on behalf of the city, or in the case of food, accepted and shared with others in the work place.
 - (4) items received and donated to a charitable organization.

SCOTTSDALE REVISED CODE

Sec. 2-51. Open government.

- (a) The citizens of Scottsdale expect and deserve open government. Arizona has an official public policy "that meetings of public bodies be conducted openly" and that any doubt should always be resolved "in favor of open and public meetings" (A.R.S. § 38-431.09). The city council has adopted a formal goal of "Open and Responsive Government: Make government accessible, responsive and accountable so that decisions reflect community input and expectations" (Nov. 4, 2004 Mission and Goals). And Scottsdale citizens have voted in favor of a Vision Statement that "Scottsdale will be a leader in promoting open government processes that are accessible, responsive, and fair to all of its citizen participants" (City of Scottsdale General Plan 2001, page 87).
- (b) Therefore, city officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. Indeed, city officials are encouraged to employ a "mindset of openness" in conducting the affairs of the city and should be cautious before voting to hold a portion of a meeting in executive session. Moreover, city officials are reminded that any attempt to circumvent the Open Meeting Law -- such as by using technology, a "hub-and-spoke" scheme, or any other technique involving less than a quorum yet designed to communicate with a quorum of the public body -- can violate the Open Meeting Law. City officials also shall show no favoritism on who has access to or receives relevant information on matters under consideration or of general public interest.
- (c) The city attorney is encouraged to vigorously promote and enforce state laws regulating open meetings, and be proactive and assertive in ensuring strict adherence to those laws reflecting the city's "mindset of openness."

SCOTTSDALE REVISED CODE

Sec. 2-52. Open meeting laws; executive sessions.

- (a) Arizona law recognizes that there are very narrowly limited occasions when the public's interests are best protected by the public body meeting in closed executive session. To honor the mindset of openness, city officials should consider that, although state law allows discussion of certain limited matters in executive session, closed meetings should be utilized as infrequently as possible and only in clearly compelling circumstances.
- (b) In addition to complying with the Open Meeting Law requirement that a majority of the public body vote in favor of meeting in closed executive session, Scottsdale public bodies will first introduce the item on the agenda, hear the need to go into executive session explained, receive the assent of the city attorney (or designee) that the matter would be an appropriate use of the executive session exception, and then vote to see if a majority of the public body agrees there is a legitimate need to go into executive session.
- (c) To ensure strict compliance with state law, the city attorney (or designee) shall be present at and actively protect the letter and spirit of the Open Meeting Law in all council meetings, all council executive sessions, and all executive sessions to be held by any other city board, commission, committee, task force, or other appointed advisory group. While in executive session, the city attorney (or designee) shall ensure that all discussions and consultations that take place fit within the bounds of what is allowed and appropriate under a strict and tight interpretation of Arizona's Open Meeting Law. All other questions and discussions related to that same issue shall be posed and addressed only in a public forum either prior to or following the executive session.
- (d) The city attorney (or designee) will not attend those portions of executive sessions involving personnel matters, pursuant to A.R.S. § 38-431.03(A)(1), relating to the city auditor, city clerk, city judge; associate city judges, city manager, or city treasurer, but may attend if requested to do so by the city council.
- (e) Before leaving the executive session, the city attorney (or designee) shall remind those present in the closed executive session that Arizona law (a) mandates that all discussions within and minutes of executive sessions are strictly confidential for all time, and (b) prohibits attendees from revealing to anyone, including family members, any part of any discussion that took place in executive session.

ARTICLE 3.1. PUBLIC MEETINGS AND PROCEEDINGS

§ 38-431. Definitions

In this article, unless the context otherwise requires:

- 1. "Advisory committee" means a committee that is officially established, upon motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
- 2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in § 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in § 38-431.03 and the auditor general as provided in § 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
- 3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.
- 4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
- 5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
- 6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.
- 7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 1, eff. May 22, 1974; Laws 1978, Ch. 86, § 1; Laws 1982, Ch. 278, § 1; Laws 1985, Ch. 203, § 1; Laws 2000, Ch. 358, § 1.

§ 38-431.01. Meetings shall be open to the public

- **A.** All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.
- **B.** All public bodies, except for subcommittees and advisory committees, shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:
 - 1. The date, time and place of the meeting.
 - 2. The members of the public body recorded as either present or absent.
 - 3. A general description of the matters considered.
- 4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.
- **C.** Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to § 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.
- **D.** The minutes or a recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article.
- **E.** All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.
- **F.** The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.
- **G.** A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.
- H. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

CREDIT(S)

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 2, eff. May 22, 1974; Laws 1975, Ch. 48, § 1; Laws 1978, Ch. 86, § 2; Laws 1982, Ch. 278, § 2; Laws 2000, Ch. 358, § 2.

§ 38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

- 1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
- 2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
- 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
- 4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
- 5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
- 6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
- 7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.
- **B.** Minutes of and discussions made at executive sessions shall be kept confidential except from:
 - 1. Members of the public body which met in executive session.

- 2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.
- 3. The auditor general on a request made in connection with an audit authorized as provided by law.
- 4. A county attorney or the attorney general when investigating alleged violations of this article.
- **C.** The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.
- **D.** Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.
- E. Except as provided in § 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.
- F. Disclosure of executive session information pursuant to this section or \S 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or \S 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 4; Laws 1982, Ch. 278, § 4; Laws 1983, Ch. 274, § 2, eff. April 27, 1983; Laws 1990, Ch. 56, § 1, eff. April 12, 1990; Laws 2000, Ch. 358, § 4.

§ 38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

CREDIT(S)

Added as § 38-431.03 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.04 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974.

§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification

- **A.** All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.
- **B.** A public body may ratify legal action taken in violation of this article in accordance with the following requirements:
- 1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
- 2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
- 3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
- 4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

CREDIT(S)

Added as § 38-431.04 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.05 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 5; Laws 1982, Ch. 278, § 5.

§ 38-431.06. Investigations; written investigative demands

- **A.** On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.
- **B.** In addition to other powers conferred by this article, in order To carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:
 - 1. Issue written investigative demands to any person.
 - 2. Administer an oath or affirmation to any person for testimony.
- 3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
 - 4. Examine by means of inspecting, studying or copying any account, book, computer,

document, minutes, paper, recording or record.

- 5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.
 - C. The written investigative demand shall:
- 1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
- 2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
- 3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
- 4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.
- **D.** If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:
 - 1. Adjudging the person in contempt of court.
- 2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
 - 3. Granting other relief the court deems proper.

CREDIT(S)

Added by Laws 2000, Ch. 358, § 5.

- § 38-431.07. Violations; enforcement; removal from office; in camera review
 - A. Any person affected by an alleged violation of this article, the attorney general or the

county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

- **B.** A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.
- **C.** In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 6; Laws 1982, Ch. 278, § 7; Laws 2000, Ch. 358, § 6.

§ 38-431.08. Exceptions; limitation

- **A.** This article does not apply to:
- 1. Any judicial proceeding of any court or any political caucus of the legislature.
- 2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
- 3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
- 4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to § 41-619.55.

- **B.** A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:
- 1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
- 2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.
- 3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.
- 4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.
- **C.** The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in § 38-431.07, as against the director only.
- **D.** Either house of the legislature may adopt a rule or procedure pursuant to <u>article IV</u>, <u>part 2, § 8, Constitution of Arizona</u>, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

CREDIT(S)

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1975, Ch. 71, § 1, eff. May 20, 1975; Laws 1977, Ch. 128, § 1; Laws 1982, Ch. 278, § 8; Laws 1990, Ch. 298, § 1, eff. June 16, 1990; Laws 1998, Ch. 232, § 8; Laws 1998, Ch. 270, § 12, eff. August 17, 1999; Laws 1999, Ch. 211, § 33; Laws 2000, Ch. 251, § 14; Laws 2000, Ch. 358, § 7.

§ 38-431.09. Declaration of public policy

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe any provision of this article in favor of open and public meetings.

CREDIT(S)

Added by Laws 1978, Ch. 86, § 7. Amended by Laws 1982, Ch. 278, § 9; <u>Laws 2000, Ch. 358, § 8.</u>

STATE OF ARIZONA OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by TERRY GODDARD ATTORNEY GENERAL July 25, 2005 No. 105-004 (R05-010)

Re: Open Meeting Law Requirements and E-mail to and from Members of a Public Body

To: Donald M. Peters, Esq. Miller, LaSota & Peters 722 East Osborn Road, Suite 100 Phoenix, Arizona 85014

Pursuant to Arizona Revised Statutes ("A.R.S.") §15-253(B), you submitted for review your opinion to the president of the Washington Elementary School District ("District") Governing Board ("Board") regarding electronic mail ("e-mail") communications to and from members of the Board and Arizona's Open Meeting Law ("OML").

This Opinion revises your analysis to set forth some parameters regarding e-mail to and from members of a public body and is intended to provide guidance to public bodies throughout the State that are subject to the OML. See Ariz. Att'y Gen. Op. 198-006 at 2, n.2.

Question Presented

What are the circumstances under which the OML permits e-mail to and from members of a public body?

Summary Answer

Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under

the OML. While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.

Analysis

The OML is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret. See Karol v. Bd. Of Educ. Trs., 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). "[A]ny person or entity charged with the interpretation [of the OML] shall construe any provision [of the OML] in favor of open and public meetings." A.R.S. § 38-431.09. In addition, devices used to circumvent the OML and its purposes violate the OML and will subject the members of the public body and others to sanctions. See e.g. Ariz. Att'y. Gen. Ops. 199-022, n. 7; 175-7. These principles guide the analysis of the use of e-mails by members of a public body. E-mail communications to or from members of the public body are analyzed like any other form of communication, written or verbal, in person or through technological means.

A. An Exchange of E-mails Can Constitute a Meeting.

1. <u>A Meeting Can Occur Through Serial Communications between a Quorum of the Members of the Public Body.</u>

All meetings of public bodies must comply with the OML.² The OML defines a "meeting" as:

the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.

A.R.S. § 38-431(6).

A.R.S. § 38-431-.07 (A) provides for penalties for violating the OML against not only members of the public body, but also against "[a person] who knowingly aids, agrees to aid or attempts to aid another person in violating [the OML]."

² A "public body" subject to the OML includes:

the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivisions. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

The OML does not specifically address whether all members of the body must participate simultaneously to constitute a "gathering" or meeting. However, the requirement that the OML be construed in favor of open and public meetings leads to the conclusion that simultaneous interaction is not required for a "meeting" or "gathering" within the OML. "Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision." Arizona Agency Handbook § 7.5.2. (Ariz. Att'y Gen. 2001) Thus, even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a "meeting." See Del Papa v. Board of Regents, 114 Nev. 388, 393, 956 P. 2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place)³; Roberts v. City of Palmdale, 20 Cal. Rptr. 2d 330, 337, 853 P. 2d 496, 503 (1993) ("[A] concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.")4

2. Discussion, Proposals and Deliberations Among a Quorum of a Public Body Must Occur at a Public Meeting.

A "meeting" includes four types of activities by a quorum of the members of the public body: discussing legal action, proposing legal action, taking legal action, and deliberating "with respect to such action[s]." A.R.S. § 38-431(4). Three of these activities necessarily involve more than a one-way exchange between a quorum of members of a public body.

For example, the ordinary meaning of the word "discuss" suggests that a discussion of possible legal action requires more than a one-way communication. See Webster's II New College Dictionary 385 (1994) (defining "discuss" as "to speak together about.") Likewise, the term

³ Like the OML, Nevada's open meeting law defines a "meeting" as a gathering of a quorum of members of the public body. Nev. Rev. Stat. 241.015(2).

⁴ This Office declines to follow Beck v. Shelton, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004) because of differences between Arizona's law and Virginia's. In Beck, the court concluded that "the term ['assemble'] inherently entails the quality of simultaneity." Further, the court observed that "[w]hile such simultaneity may be present when e-mail technology is used in a 'chat room' or as 'instant messaging,' it is not present when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission." Id., 267 Va. at 490, 593 S.E. 2d at 199.

"deliberations" requires some collective activity. See Ariz. Att'y Gen. Op. 197-012, citing Sacramento Newspaper Guild v. Sacramento Bd. of Supervisors, 69 Cal. Rptr. 480, 485 (App. 1968) (reversed on other grounds). "Deliberations" and "discussions" involve an exchange between members of the public body, which denotes more than unilateral activity. See Ariz. Att'y Gen. Op. 175-8; Webster's at 390 ("exchange" means "to take or give up for another"; "to give up one thing for another"; "to provide in return for something of equal value.") Finally, "taking legal action" in the context of the OML requires a "collective decision, commitment or promise" by a majority of the members of a public body. A.R.S. § 38-431(3); Ariz. Att'y Gen. Op. 175-7.

Unlike discussions and deliberations, the word "propose" does not imply or require collective action. Webster's defines "propose" as "to put forward for consideration, discussion, or adoption." Webster's II New College Dictionary at 944. A single board member may "propose" legal action by recommending a course of action for the board to consider. For example, the statement, "Councilperson Smith was admitted to the hospital last night" is not a proposal, but "We should install a crosswalk at First and Main" is a proposal. Thus, an e-mail from a board member to enough other members to constitute a quorum that proposes legal action would be a meeting within the OML, even if there is only a one-way communication, and no other board members reply to the email.⁵

3. An Exchange of Facts, as Well as Opinions, Among a Quorum of Members of a Public Body Constitutes a Meeting within the OML, if it is Reasonably Foreseeable that the Topic May Come Before the Public Body for Action in the Future.

Arizona's OML does not distinguish between communication of facts or opinions. An exchange of facts, as well as opinion, may constitute deliberations under the OML. See Ariz. Att'y Gen. Ops. 197-012, 179-4; 175-8. The term "deliberations" as used in A.R.S. § 38-431 means "any exchange of facts that relate to a matter which foreseeably might require some final action" Ariz. Att'y Gen. Op. 175-78; see also Sacramento

⁵ It might be argued that because the definition of meeting refers to a gathering of a quorum at which they discuss, propose or take legal action, the definition only applies to proposals made by a quorum or circumstances in which more than one person actually makes a proposal. That interpretation, however, is inconsistent with the ordinary meaning of the word "propose" and with the process for proposing legal action for consideration by public bodies. It is also contrary to the directive that the OML be construed broadly to achieve its purposes.

Unlike Arizona, some states permit exchanges of information among a quorum of a public body outside of public meetings. See Fla. AGO 2001-20, 2001 WL 276605 (Fla. A.G.) ("[C]ommunication of information, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to [Florida's sunshine law]). As in many other states, Florida's open meeting law is known as its "sunshine law."

Newspaper Guild, 69 Cal. Rptr. at 485 (deliberation connotes not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the final decision).

Of course, the OML applies only to an exchange of facts or opinions if it is foreseeable that the topic may come before the public body for action. *See Valencia v. Cata*, 126 Ariz. 555, 556-57, 617 P.2d 63, 64-5 (App. 1980); Ariz. Att'y Gen. Op. 75-8. The scope of what may foreseeably come before the public body for action is determined by the statutes or ordinances that establish the powers and duties of the body. *See* Ariz. Att'y Gen. Op. 100-009.

4. Applying OML Principles to E-mail.

Few reported decisions discuss when the use of e-mail violates a state's open meeting law. In *Wood v. Battle Ground School District*, 107 Wash. App. 550, 564, 27 P. 3d 1208, 1217 (2001), the Washington Court of Appeals held that the exchange of e-mail messages may constitute a meeting within Washington's Open Public Meetings Act. While the court held that "the mere use or passive receipt of e-mail does not automatically constitute a 'meeting'," it concluded that the plaintiff established a *prima facie* case of "meeting" by e-mails because the members of the school board exchanged e-mails about a matter, copying at least a quorum and sometimes all of the other members. The court said, "[T]he active exchange of information and opinions in these emails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business." 107 Wash. App. at 566, 27 P. 3d at 1218.

Although the Washington Open Public Meetings Act is not identical to the OML, like the OML, it broadly defines "meeting" and "action," and includes the directive that the law be liberally construed in favor of open and public meetings. 107 Wash. App. At 562, 27 P. 3d at 1216. The holding of the court in *Wood* and its attendant analysis are, therefore, persuasive.

The available case law and Arizona's statutory language indicate that a one-way communication by one board member to other members that form a quorum, with no further exchanges between members, is not a per se violation of the OML. Additional facts and circumstances must be evaluated to determine if the communication is being used to circumvent the OML. A communication that proposes legal action to a quorum of the board would, however, violate the OML, even if there is no exchange among the members concerning the proposal. In addition, passive receipt of information from a member of the staff, with nothing more, does not violate the OML. See Roberts, 20 Cal. Rptr. 2d at 337, 853 P. 2d at 503

(receipt of a legal opinion by members of a public body does not result in a meeting.); Frazer v. Dixon Unified Sch. Dist., 18 Cal. App. 4th 781, 797, 22 Cal. Rptr. 2d 641, 657 (1993) (passive receipt by board members of information

from school district staff is not a violation of the open meeting law).

There are risks whenever board members send e-mails to a quorum of other board members. Even if the first e-mail does not violate the open meeting law, if enough board members to constitute a quorum respond to the e-mail, there may be a violation of the OML. In addition, a quorum of the members might independently e-mail other board members on the same subject, without knowing that fellow board members are also doing so. This exchange of e-mails might result in discussion or deliberations by a quorum that could violate the OML. Because of these potential problems, I strongly recommend that board members communicate with a quorum about board business at open public meetings, not through e-mails.

B. Hypotheticals Illustrating the Use of E-mail.

The analysis of the OML and e-mail is theoretically no different than analyzing other types of communications. To provide additional guidance, this Opinion will address OML applications to specific factual scenarios.*

- a. E-mail discussions between less than a quorum of the members that are forwarded to a quorum by a board member or at the direction of a board member would violate the OML.
- b. If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among board members, there is no OML violation.
- c. Board member A on a five-member board may not e-mail board members B and C on a particular subject within the scope of the board's responsibilities and include what other board members D and E have previously communicated to board member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.
- d. A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing

<sup>This office has also opined that, in the context of a Call to the Public, passive receipt of information does not constitute a meeting. Ariz. Att'y Gen. Op. 199-006.
These hypotheticals assume that the e-mails are not sent by board members or at a board member's direction with the purpose of circumventing the OML and that any unilateral communications do not propose legal action.</sup>

that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.

- e. An e-mail from the superintendent of the school district to a quorum of the board members would not violate the OML. However, if board members reply to the superintendent, they must not send copies to enough other members to constitute a quorum. Similarly, the superintendent must not forward replies to the other board members.
- f. One board member on a three-member board may e-mail a unilateral communication to another board member concerning facts or opinions relating to board business, but board members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.
- g. A board member may copy other board members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the board members.
- h. An e-mail request by a board member to staff for specific information does not violate the OML, even if the other board members are copied on the e-mail. The superintendent may reply to all without violating the OML as long as that response does not communicate opinions of other board members. However, if board members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.
- i. A board member may use e-mail to send an article, report or other factual information to the other board members or to the superintendent or staff member with a request to include this type of document in the board's agenda packet. The agenda packet may be distributed to board members via e-mail. Board members may not discuss the factual information with a quorum of the board through email.

C. Measures to Help Ensure that the Public Body Conducts Its Business in Public.

Although it is not legally required, I recommend that any e-mail include a notice advising board members of potential OML consequences

of responding to the e-mail. Possible language for a notice for e-mails from the superintendent or staff is as follows:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the public body. Members of the public body may reply to this message, but they should not send a copy of the reply to other members.

Language for e-mails from board members could be the following:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members and board members should not reply to this message.

Although the OML does not require the above notice, such notification may serve as a helpful reminder to board members that they should not discuss or deliberate through email. It is also important to remember that e-mail among board members implicates the public records law, as well as the OML. E-mails that board members or staff generate pertaining to the business of the public body are public records. See Star Publ'g Co. v. Pima County Attorney's Office, 181 Ariz. 432, 891 P.2d 899 (App. 1994); see also Arizona Agency Handbook § 6.2.1.1 (Ariz. Att'y Gen. 2001). Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection. A.R.S. §§ 39-121, 41-1436. Although the OML focuses on e-mails involving a quorum of the members of the public body, the public records law applies to any e-mail communication between board members or board members and staff. Public bodies might consider maintaining a file that is available for public inspection and contains any e-mails sent to and from board members. Ready access to this type of information helps ensure compliance with the legislative mandates favoring open government.

I encourage all public bodies to educate board members and staff concerning the parameters of the OML and the public records law to ensure compliance with these laws. E-mail is a useful technological tool, but it must be used in a manner that follows the OML's mandate that all public bodies propose legal action, discuss, deliberate, and make decisions in public.

Conclusion

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on

matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.

Terry Goddard Attorney General

450529

SCOTTSDALE REVISED CODE

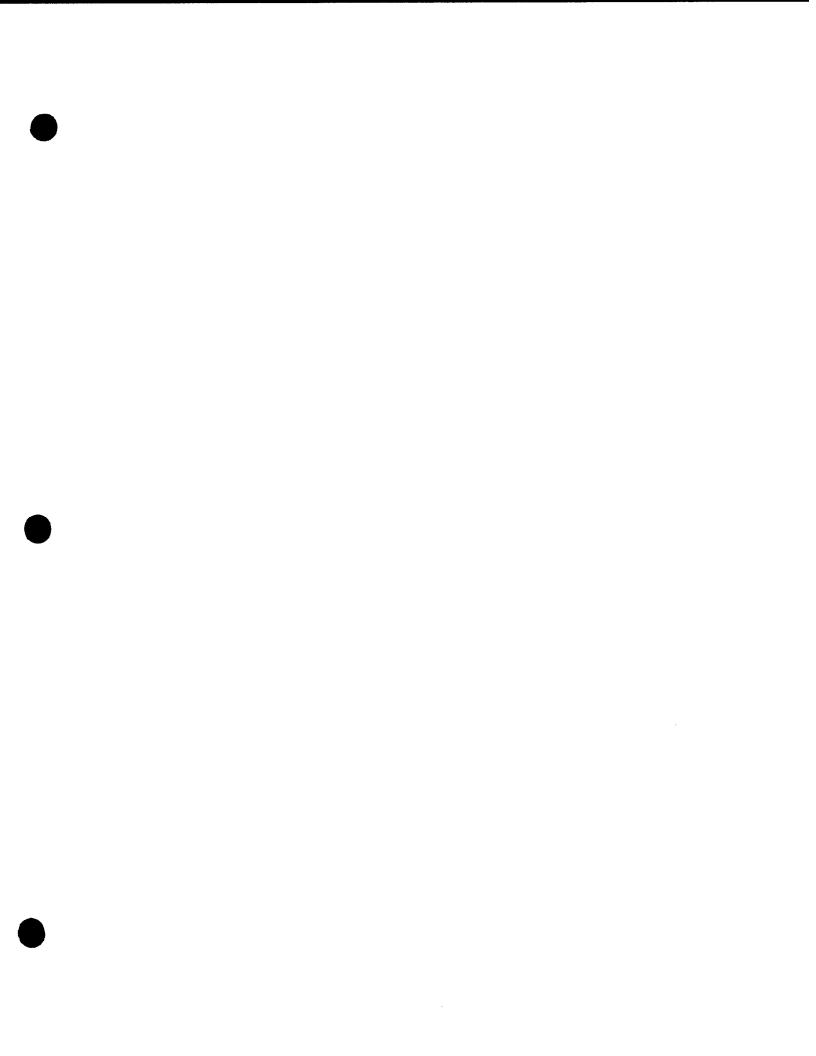
Sec. 2-53. Preservation and availability of public documents.

- (a) Consistent with Arizona's Public Records Laws, written communications between public officials and private citizens on matters explicitly involving the affairs of the city are considered public documents. Such written communications shall be preserved in compliance with the city's document retention policy and made available for review upon request.
- (b) "Written communications" includes city-related e-mail messages and attachments originating from or received by elected or appointed officials on any publicly or privately owned equipment at city hall, the city official's place of employment, private residence, or remote locations. Destruction of such communications prior to the expiration of the time period specified in the city's document retention policy is prohibited.
- (c) The city's electronic messaging systems and electronic communications systems (including telephones) are to be used for official city business only, except for limited personal uses (e.g., asking a person to lunch or a social event, checking on the welfare of family members, scheduling or canceling a doctor's appointment). City officials are prohibited from using the city's official e-mail service for commercial purposes or other inappropriate uses.

SCOTTSDALE REVISED CODE

Sec. 2-54. Undue influence on subordinates.

- (a) Under the city's charter, administrative authority is vested solely in the city manager. Members of the city council may make inquiries to city staff. Members of the city council may not interfere with the city manager's authority, however, by giving orders or explicit directions or requests, publicly or privately, regarding city matters to any subordinates of the city manager, and they shall not attempt to exert influence on the city manager on issues relating to the hiring or removal of persons employed by the city.
- (b) All city officials shall respect the orderly lines of authority within city government.



SCOTTSDALE CITY CHARTER

Article 2: The Council

* * * *

Sec. 17. Interference in administrative service.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the city manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. Nothing in this section shall be construed, however, as prohibiting the council while in open sessions from fully and freely discussing with or suggesting to the city manager anything pertaining to city affairs or the interests of the city.

SCOTTSDALE REVISED CODE ARTICLE II, CHAPTER 2

DIVISION 4. CODE OF ETHICAL BEHAVIOR: ENFORCEMENT

Sec. 2-55. Filing complaints.

- (a) <u>Contents</u>. Any person who believes a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in division 3 of this article, above, or violated any state or city law may file a sworn complaint with the city attorney identifying:
 - (1) The complainant's name, address, and telephone number;
 - (2) The name and position of the city official who is the subject of the complaint;
 - (3) The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated;
 - (4) A statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
 - (5) All documents or other material in the complainant's possession that are relevant to the allegation, a list of all documents or other material relevant to the allegation that are available to the complainant but not in the complainant's possession, and a list of all other documents or other material relevant to the allegations but unavailable to the complainant, including the location of the documents, if known;
 - (6) A list of witnesses, what they may know, and their contact information, if known; and
 - (7) If the alleged violation occurred more than ninety days before the sworn complaint is filed with the city attorney, then the complaint must identify the date the complainant learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation, a list of the persons with knowledge about the date the violation was discovered, and a summary of the information they possess about the discovery.

The complaint shall include an affidavit stating that the information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the ethics code. If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

(b) <u>Time for filing</u>. A complaint must be filed on or before the 365^{th} day after the violation is alleged to have occurred or the 90^{th} day after the violation was discovered, whichever date is earlier.

- (c) <u>False or frivolous complaints</u>. A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. If after reviewing an ethics complaint it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury, then the city attorney may refer the matter to the appropriate law enforcement authority for possible prosecution. A city official who seeks to take civil action regarding any such complaint shall do so at her or his expense.
- (d) <u>Elections complaints</u>. Any complaints relating to city elections shall be filed with or referred to the city clerk for review and disposition as provided by law.

Sec. 2-56. Complaints against members of boards, commissions, committees, task forces, and other appointed advisory groups.

- (a) <u>Initial screening of complaints</u>. The city attorney shall review each complaint filed alleging a violation by a member of a city board, commission, committee, task force, and other appointed advisory group and within fifteen days either:
 - (1) Return it for being incomplete;
 - (2) Dismiss it for being untimely;
 - (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of the ethics code or any laws;
 - (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the city attorney determines the complaint was false, misleading, frivolous, or unsubstantiated;
 - (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
 - (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, take action as set forth below.

In all circumstances, the city attorney shall simultaneously notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(b) <u>Review and findings</u>. For ethics complaints alleging violations of the city's Code of Ethical Behavior or a city law that proceed for additional review, the city attorney shall investigate the allegations and, within thirty days (unless the city attorney requests a fifteen day extension that is granted in writing by the mayor or vice mayor), submit to the city council, the complainant, the official who is the subject of the complaint, and the city clerk a report with findings of fact,

conclusions of law, and a recommendation. The city council shall consider the city attorney's report at a public meeting. If the city council finds an ethical violation, then it may remove the member from the city board, commission, committee, task force, or other appointed advisory group. In resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of wrongdoing.

Sec. 2-57. Complaints against the mayor and members of the city council.

- (a) <u>Independent ethics reviewers</u>. The city shall use independent, non-city personnel to handle ethics complaints lodged against the mayor and members of the city council (and to handle any ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group if the city attorney would have a conflict of interests in handling that complaint). The city attorney, in compliance with applicable provisions of the city Procurement Code, shall select a pool of ten to twelve individuals who could serve as the city's independent ethics reviewers to handle ethics complaints lodged against the mayor and members of the city council. To be eligible for selection, individuals must be retired federal or state judges or faculty members at the law schools at Arizona State University or the University of Arizona who do not live in Scottsdale and do not work for firms or employers that regularly have business in Scottsdale or represent clients in Scottsdale. In the event the city attorney cannot select a sufficient number of eligible people who can perform the necessary services, then the city attorney may complete the pool by selecting independent qualified attorneys who do not live or office in Scottsdale and whose firms or employers do not regularly have business in Scottsdale or represent clients in Scottsdale. At least two-thirds of the independent ethics reviewers shall be retired judges or law school faculty members. Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law. Each year the city attorney shall nominate one person from the independent ethics reviewers to serve as the city's "independent ethics officer," and the other independent ethics reviewers will either confirm the nominee or select another reviewer from the pool. The independent ethics officer shall not serve in that role for more than one consecutive year.
- (b) <u>Initial screening of complaints</u>. The city attorney shall immediately transfer any complaint filed against the mayor or members of the city council to the city's independent ethics officer, who will conduct the initial screening of the complaint and within fifteen days issue a report of findings and conclusions and recommend that the city attorney handle the complaint as follows:
 - (1) Return it for being incomplete;
 - (2) Dismiss it for being untimely;
 - (3) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of the ethics code or any laws;
 - (4) Dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer

- determines the complaint was false, misleading, frivolous, or unsubstantiated;
- (5) Refer alleged violations of Arizona or federal laws to an appropriate law enforcement agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law; or
- (6) If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the city's Code of Ethical Behavior or a city law, refer the matter to an independent ethics panel for further action as set forth in subsection (c) below.

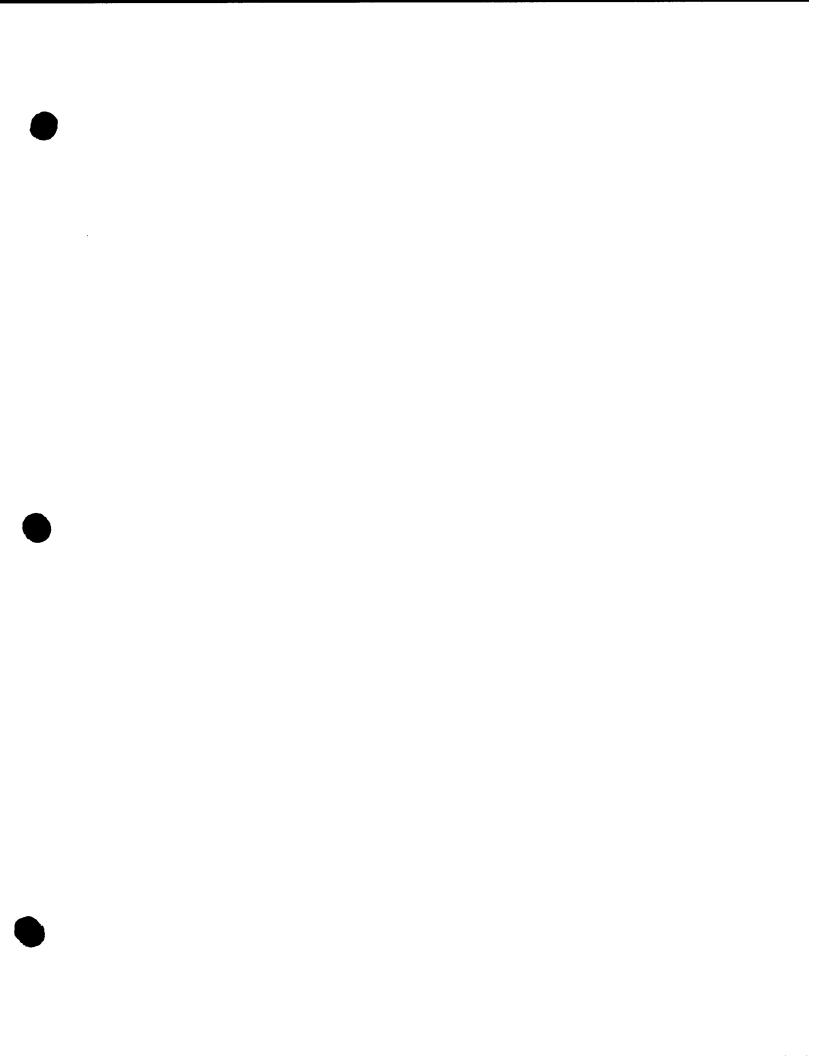
In all circumstances, the city attorney shall follow the independent ethics officer's recommendation and notify in writing the complainant, the city official subject to the complaint, and the city clerk regarding the action taken.

(c) Review and findings. If the independent ethics officer recommends referral of a complaint to an independent ethics panel for further review, then the city attorney shall immediately transfer the complaint to an ethics panel consisting of three independent ethics reviewers selected by the independent ethics officer from the pool of eligible individuals. The members of the ethics panel shall investigate the complaint and report to the city council, the complainant, the official who is the subject of the complaint, the city attorney, and the city clerk its findings of fact and conclusions of law within sixty days (unless the panel requests a thirty day extension that is granted in writing by the independent ethics officer). The city council shall consider the ethics panel's report at a public meeting and either accept or reject the ethics panel's report as submitted.

Sec. 2-58. Review of complaints.

- (a) <u>Presumptions</u>. The city attorney's recommendation to refer a complaint for further review does not mean that any of the complaint's allegations are true or that any city official has violated this ethics code or any law.
- (b) <u>Procedures</u>. The city attorney will adopt written rules of procedure to govern the review process, including the right of a city official against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.
- (c) <u>Expedite</u>. The timelines for handling complaints set forth above set the outer limits. Reviewers and decision-makers are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the city officials against whom complaints have been filed.
- (d) <u>Public information regarding action taken and reports issued</u>. On the same day the city attorney notifies a complainant of the action taken on a complaint as set forth in subsections 2-56(a) and 2-57(b) of this Code, above, and on the same day the city attorney issues a report to the city council regarding complaints against members of city boards, commissions, committees, task forces,

- or other appointed advisory groups as set forth in subsection 2-56(b) of this Code, above, or an ethics panel issues a report to the city council regarding complaints against the mayor or a member of the city council as set forth in subsection 2-57(c) of this Code, above, copies of those notices and reports shall be filed with the city clerk and made available to the public as public records.
- (e) <u>Inapplicable provisions</u>. The provisions of section 1-8 of this Code are inapplicable to divisions 3 and 4 of this article.



COMPLAINT AGAINST CITY OFFICIAL CITY OF SCOTTSDALE CODE OF ETHICAL BEHAVIOR

If you believe a city official in her or his official capacity has violated a mandatory requirement or prohibition in the City of Scottsdale Code of Ethical Behavior, set forth in Scottsdale Revised Code ("SRC"), Article II, Chapter 2, Division 3 (§§ 2-47 through 2-54) or violated any state or city law you may file a sworn complaint with the Scottsdale city attorney.

You are required to sign and have notarized an affidavit as to the truth of the information in your complaint. Pursuant to SRC § 2-55(c):

A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and potential civil liability for, among other possible causes of action, defamation. . .

To make a complaint, **all** of the information listed below **must be identified/provided**. Attach additional pages, as necessary. Incomplete information will result in the return of your complaint. If the complaint is based on information and belief, you must identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to you by those sources.

| 1. Your name, address, and telephone number. |
|--|
| Name and position of the city official who is the subject of the complaint. |
| 3. The nature of the alleged violation, including the specific provision of the ethics code or law allegedly violated. |
| |

| 4. Statement of facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred. |
|---|
| |
| |
| |
| 5. List all documents or other material in your possession that are relevant to the allegation. |
| |
| |
| 6. List all documents or other material relevant to the allegation that are available to you, but are not in the your possession. |
| |
| |
| |
| 7. <u>List all other documents or other material relevant to the allegations</u> but unavailable to you, including the location of the documents, if known. |
| |
| |
| |
| 8. A list of witnesses, what they may know about the allegation, and their contact information, if known. |
| |
| |
| |
| |
| |
| 9. If the alleged violation occurred more than 90 days before the filing of |

a) identify the date that you learned of the alleged violation and provide a statement of the facts surrounding the discovery of the violation.

this sworn complaint with the city attorney, you must:

| b) provide a list of the persons with knowledge about the date the violation was discovered. |
|--|
| |
| |
| |
| c) provide a summary of the information the persons listed in b), above, know about the discovery. |
| |
| |
| |
| |
| AFFIDAVIT |
| I, |
| Signature of complainant |
| Subscribed and sworn to before me by this day of, |
| Notary Public My Commission Expires: |





Open Meeting Law

Incompatibility of Offices

Public Records

FINANCIAL DISCLOSURE

Limits on Entertainment

December 2005



INTRODUCTION

The League prepared this report to help you avoid some of the potential legal pitfalls of holding local public office, whether elected or appointed. The report reviews seven areas of state law that affect public officers: open meetings, conflicts of interests, public records, incompatibility of office, nepotism, financial disclosure, and limitations on entertainment.

The life of a public official is not an easy one. State laws, like the seven highlighted in this report, continually affect the decision-making process. Good intentions (like, "but I didn't mean to violate the law") help. However, good intentions alone are not sufficient because violations of these laws can carry stiff penalties. Therefore, you need to be familiar with the laws governing your conduct in public office.

We hope you will take the time to read this report and retain it for future reference. Most importantly we hope this report will prompt you to discuss each of these laws with your city or town attorney. This report is not intended to replace the need for you to review these laws with your local attorney; it's really only a starting point for discussion of your particular situation in your city or town.

OPEN MEETING LAW

General Provisions1

The operation of government and, specifically, the activities of government officials are issues of concern to the general public. Although there are many reasons for this movement toward public awareness, there seems to be one distinct message delivered by the public: THE PUBLIC'S BUSINESS MUST BE CONDUCTED IN PUBLIC!

The Arizona Legislature has declared its policy concerning open meetings very clearly:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this [law] shall construe any provision of this [law] in favor of open and public meetings.²

Arizona's Open Meeting Law (Law) provides very simply that, with a few limited exceptions, all meetings of a public body shall be open to all

persons desiring to attend and listen to the deliberations and proceedings.³ The Law defines a "meeting" as "the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action."⁴ The label attached to a meeting does not alter application of the Law. Whether the meeting is referred to as regular or special, workshop or study session, the Law's requirements must be met. The only exception to the public meeting requirement is an executive session, which is discussed later.

"Public body" is defined as "the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body."⁵

This broad definition includes planning and zoning commissions, boards of adjustment, state licensing boards, library boards, and school boards. It also includes advisory committees and subcommittees, even if no member of the original appointing public body is a member of the advisory group.⁶

Public Notices of Meetings

The Law requires a public body to give advance notice of every public meeting and executive session to the general public and to each member of the public body. In giving notice, the first step is to file with the appropriate official a statement identifying where notices of the meetings of the public body will be posted. Those officials include the Secretary of State (for state public bodies), the Clerk of the Board of Supervisors (for county, school district, and special district public bodies), and the City or Town Clerk or Mayor's Office (for public bodies of cities and towns).⁷

Once this statement has been filed, the Law requires the public body post notice of each of its meetings in accordance with this statement and "give such additional public notice as is reasonable and practicable." Notice of individual meetings is not necessary if the public body intends to meet at a regular day, time, and place and chooses to post one notice of all of its meetings during a specified time period. Such notice must be posted at the beginning of the period.

Except in the case of an actual emergency, no public meeting or executive session may be held with less than 24 hours' notice to the general public and each member of the public body. The notice must include the date, time, and place of the meeting. If an executive session will be held, the notice must also cite the specific provision of law authorizing the executive session.

There are three exceptions to the notice requirements outlined above. First, a meeting for which notice has been properly posted may be recessed and resumed with less than 24 hours' notice, although the date, time, and place of the resumed meeting must be announced prior to recessing the originally posted meeting. 12 Second, an emergency meeting may be held with less than 24 hours' notice in the case of an actual emergency. Such an emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequences that would result from waiting until the required notice could be given. Prior to the emergency discussion or action, the public body must give as much notice as possible, announce the nature of the emergency, include those reasons in the minutes of the emergency meeting, and post a public notice within 24 hours declaring that an emergency session has been held and setting forth the agenda items covered.13 Third, notice of a meeting to consider ratification of a prior act taken in violation of the Law requires at least 72 hours advance notice.14

Agendas

In addition to notice of the date, time, and place of the meeting, the Law requires that the notice include either an agenda of the matters to be discussed, considered, or decided at the meeting, or information on how the public may obtain a copy of the agenda. The agenda for a public meeting must list the "specific matters to be discussed, considered or decided," and should contain "such information as is reasonably necessary to inform the public of the matters to be discussed or decided." Such items as "new business" or "old business" are insufficient unless the specific items of new or old business are identified.

Agendas for executive sessions must contain a "general description of the matters to be considered" and must "provide more than just a mere recital of the statutory provisions authorizing the executive session," but the agenda should not contain information that "would defeat the purpose of the executive session."

The agenda may be made part of the public notice or, if the notice advises members of the public how they can obtain an agenda, then it can be distributed separate from the notice. In either case, the agenda

must be made available at least 24 hours before the meeting, unless an actual emergency exists. Supporting documentation that is referred to in or made part of the agenda must be made available to the public in the same time frame. It may be appended to the actual agenda itself (provided the public can read it), or the agenda may advise the public where such supporting documentation can be obtained.

The agenda sets the parameters of what can be done during a public meeting. Only those items specifically listed on the agenda or matters related thereto may be discussed, considered, or decided. Two quasi-exceptions apply.

First, agendas may include a "summary of current events" item, during which any member of the public body or the chief administrator "may present a brief summary of current events without listing in the agenda the specific matters to be summarized." However, the public body may not propose, discuss, deliberate, or otherwise take legal action on such a matter at that meeting, unless that particular matter also has been specifically identified on the posted agenda.

Second, a public body may (but is not required to) put an "open call to the public" on its agenda to allow members of the public to address the public body on matters not otherwise listed on the agenda. However, the public may only raise issues within the jurisdiction of the public body, and members of the public body may not discuss or take legal action on new matters raised during an open call to the public. Members of the public body have four options: sit in silence or wait until "the conclusion of an open call to the public" and then respond to criticism, ask staff to review a matter, or ask that a matter be put on a future agenda so it can be discussed.²⁰

Executive Sessions

The Law permits an executive session (a closed meeting) to be held for seven limited purposes. In addition to the notice and agenda requirements set forth earlier, members of the public body must vote during a public meeting to agree to meet in executive session. The general public is properly excluded from an executive session. Only those "individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session." 21. The public body must instruct those present at the executive session that all matters discussed in the executive session, as well as the minutes, must be kept confidential. 22 Finally, no vote may be taken during an executive session. Any final action on an item discussed in an executive session must be taken during a public meeting.23

The only purposes for which an executive session discussion may be held are the following:

- Personnel matters involving a specific position or individual (and these individuals must be given written notice at least 24 hours in advance in case they want to be discussed in open session).²⁴
- Confidential information specifically exempt by law from public inspection.
- Legal advice provided by the public body's attorney.²⁵
- Discussion with the public body's attorney regarding pending or contemplated litigation, settlement discussions to avoid or resolve litigation, or contract negotiations.
- Instruction of designated representatives concerning salary and compensation negotiations with employee organizations.
- International and interstate negotiations and negotiations by a city or town with a tribal council located within or adjacent thereto.
- Instruction of designated representatives concerning negotiations for the purchase, sale, or lease of real property.²⁶

Improper use of the executive session provision is one of the most common types of Open Meeting Law violations. Therefore, a public body, with the assistance of its attorney, should establish a clear procedure to use before holding an executive session.

Minutes

All public bodies, except subcommittees and advisory committees, must take and retain written minutes or a recording of all meetings.²⁷ The minutes or a recording of all public meetings must include, at a minimum, the following:

- 1. The date, time, and place of the meeting.
- The members of the public body recorded as either present or absent.
- A general description of the matters discussed or considered.
- An accurate description of all legal actions proposed, discussed, or taken, and the names of members who proposed each motion.
- The names of persons making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.

- Sufficient information to permit further investigation of the background or specific facts of a decision if the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken.
- In case of an actual emergency, a statement setting forth the reasons necessitating a discussion, consideration, or decision without the matter being placed on an advance agenda.
- 8. In case of ratification, a copy of the required disclosure statement.

The minutes of executive sessions must contain the information described in paragraphs 1, 2, 3, and 7 above, and an accurate description of all instructions given in an executive session.²⁸

The minutes or a recording of any meeting (*except* an executive session) must be open to public inspection no later than three working days after the meeting. ²⁹ Minutes must be taken in executive sessions and must be kept confidential except from the members of the public body that met in executive session; the officers, appointees, or employees who were the subject of discussion in a personnel executive session; the auditor general when conducting an audit; or the Attorney General or county attorney when investigating alleged violations of the Law. ³⁰ If the public body wishes to exclude all staff from attending the executive session, then the minutes should be kept or recorded by a member of the public body.

In addition to written or recorded minutes of the meeting, the Law provides that any part of a public meeting may be recorded by any person in attendance by means of a tape recorder, camera, or other means of sonic reproduction as long as there is no active interference with the conduct of the meeting.³¹

E-Mail Violations

The Law applies to all meetings of a public body, regardless whether a quorum gathers "in person or through technological devices." ³² Therefore, you should be extra careful when communicating with any other council members – even less than a quorum – via technology, such as by telephone or electronic mail ("e-mail"). Otherwise, you may find that you have violated the Law.

A "meeting" occurs when a quorum of a public body "gathers" and takes any one of four actions: discusses legal action, proposes legal action, takes legal action, or deliberates with respect to any such actions.³³ A recent Attorney General Opinion notes that the simple act of a public body member sending out a single e-mail to a quorum of the public body could violate the Law if the e-mail proposes legal

action.³⁴ Moreover, "[t]hree of these activities [to discuss, deliberate, or take action] necessarily involve more than a one-way exchange between a quorum of a public body," so even the simple act of a member of the public body responding to, exchanging, or otherwise circulating e-mails regarding legal action among a quorum could be interpreted as a violation of the Law.³⁵ Therefore, you should be extra cautious whenever communicating with other council members using e-mail or other technological devices.

To help public bodies comply with the Law, the Attorney General recommended that, while it is not legally required, members of public bodies who send e-mails to each other might want to include the following language in their e-mail message to remind colleagues that replying or circulating an e-mail to others could be construed as discussing, deliberating, or taking legal action:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members and board members should not reply to this message.

For similar reasons, the Attorney General advised that staff might want to use the following language:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the public body. Members of the public body may reply to this message, but they should not send a copy of the reply to other members.

Ratification

A public body may ratify legal action previously taken in violation of the Law. Ratification is appropriate when the public body needs to validate retroactively a prior act in order to preserve the earlier effective date of the action.

Ratification merely validates the prior action. It does not eliminate liability of the public body or others for violation of the Law.

All legal action transacted during a meeting held in violation of the Law is null and void unless ratified. The procedure for ratification is prescribed in A.R.S. § 38-431.05(B). It is a detailed and complicated procedure that must be followed carefully, "within thirty days after discovery of the violation," and with advice by the public body's attorney.

Sanctions

If any business of a public body is conducted in violation of the Law, the actions taken at such a meeting are automatically null and void.³⁶ The Law

can be enforced against a member of a public body and any person who knowingly aids, agrees to aid, or attempts to aid anyone in violating the Law.³⁷ Any person affected by an alleged violation, the Attorney General, or the county attorney for the county in which an alleged violation occurred, may file an action and obtain civil penalties of up to \$500 for each violation, attorney's fees and court injunctions against the offending public body or public official. If the court finds that a public officer intentionally violated the Law, the court may remove the officer from office and assess the officer personally with the attorney's fee award. Moreover, a member of a public body shall not direct staff to communicate in violation of the Law. ³⁸

CONFLICT OF INTERESTS

One of the most misunderstood phrases in the media today is conflict of interests. The phrase carries such negative connotations, and yet it is only natural, in our system of part-time citizen legislators, for elected and appointed officials to face potential conflict of interests situations. It is not "bad" to have a conflict of interests, but it is illegal to fail to declare a conflict of interests under Arizona law or to participate or otherwise be involved in discussions on issues or contracts where such a conflict exists.

This portion of the report may help you identify potential conflicts of interests and how you may avoid violations of this state law, which is one of the most complicated set of laws on the books. To understand its effect on your actions we suggest you discuss the law and your particular situation with your own private attorney or the city or town attorney. FIND OUT AHEAD OF TIME WHAT YOUR CONFLICTS ARE!

Applicability

The conflict of interests law covers all public officers and employees of incorporated cities and towns. This includes the mayor, council members, and members of all appointed boards and commissions (parks, planning and zoning, libraries, etc.); the city manager, his or her appointees, and all consultants; and full-time, part-time, and contractual employees of the city or town.

The conflict of interests law is also applicable when the private interests of a public official's or public employee's relative are under consideration. The law broadly defines a relative to be not only a husband or wife, child, grandchild, parent, grandparent, brother or sister (and their spouses) but also the following in-laws: brothers, sisters, parents, and the child of a spouse.³⁹ All other relatives, whether by blood or marriage, are not subject to the restrictions of this law.

Conflict of Interests Defined

The conflict of interests law distinguishes between interests that are "remote" and those that are "substantial."⁴⁰

Essentially what it says is that remote interests are so minor that they do not constitute illegal conflicts of interests, and that any interest which is not remote, as detailed in state law, is a substantial interest. If you have only a "remote interest" in a matter before the council, then you can vote and participate in the discussion. Here is what the law defines as a remote interest.

REMOTE INTERESTS exist when the public officer or employee or a relative is:

- A nonsalaried officer or member of a nonprofit corporation. Thus, being a nonsalaried officer or a member of a nonprofit health agency doing business or requesting a grant from the city or town technically would not constitute a conflict.
- The landlord or tenant of a contracting party.
 For example, a council member may lease office
 space to a party that has a private interest in a
 public matter without it resulting in a conflict of
 interests.
- 3. An attorney of a contracting party.
- A member of a nonprofit cooperative marketing association.
- The owner of less than three percent of the shares of a corporation with an interest in a matter with the city or town, provided that:
 - Total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income; and
 - Any other payments made to the officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
- Being reimbursed only for actual and necessary expenses incurred in performance of official duties.
- 7. Receiving municipal services on the same terms and conditions as if the person were not an officer or employee of the municipality. Thus, when a council member who owns a business within the city or town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.

- 8. An officer or employee of another political subdivision, a public agency of another political subdivision, or any other public agency unless it is the same governmental entity being served who is voting on a contract or decision which would <u>not</u> confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.
- A member of a trade, business, occupation, profession, or class of persons and has no greater interest than the other members of that trade, business, occupation, profession, or class of persons. A class must consist of at least ten members to qualify the interest as remote.

SUBSTANTIAL INTEREST is defined in this law as any pecuniary or proprietary interest, either direct or indirect, other than those that are remote. In general, a conflict of interests will result when an officer or employee of a city or town is involved in substantial ownership or salarled employment with a private corporation doing business with the city or town. For example, if a council member owns or is employed by a lumberyard selling to the city, then a conflict may exist. On the other hand, if the council member is the lawyer for that lumberyard, or if the council member leased land to the lumberyard, then it is possible that no conflict exists.

A public officer or an employee may sell equipment, material, supplies, or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding.⁴² An exception to this law allows cities and towns to purchase supplies, materials, and equipment from a member of the council without going to public competitive bid as long as the single transaction does not exceed three hundred dollars and the annual total of such transactions with a member of the council does not exceed one thousand dollars.43 The city or town must adopt a policy governing such purchases and must approve this policy on an annual basis.44 All transactions above these limits must take place as a result of public competitive bidding. However, the city or town officer or employee would not be allowed to influence the bidding process in any way and must make known such interest in the official records of the city or town.

The Attorney General has concluded that there is no statutory restriction on a school board member or employee bidding on property being sold by the district, as long as the board member or employee publicly discloses such interest in the property being sold and refrains from participating in any manner in the decision to sell the property.⁴⁵

Additional Provisions

The conflict of interests law also contains the following restrictions on the activities of public officers and employees that should be reviewed with your city or town attorney.

- When a public officer or employee has been directly concerned or has exercised "administrative discretion" in an issue, that officer or employee may not represent another person before an agency of the city or town on the same issue and receive compensation for such representation. This restriction extends to twelve months after termination of office or employment with the city or town.⁴⁶
- A public officer or employee cannot disclose or use confidential information obtained during the term of office or employment.⁴⁷
- A public officer or employee cannot receive any compensation (other than as provided by law) for performance of services in any case, special proceeding, application, or other matter pending before any agency of the city or town.⁴⁸
- 4. A public officer or employee cannot use or even attempt to use his or her position to obtain anything of value that normally would not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.⁴⁹

The State Bar of Arizona has placed another restriction on local elected officials who are lawyers. The State Bar ruled that attorneys on city or town councils cannot represent clients in the city or town's courts. 50 However, the Arizona Supreme Court has ruled that attorneys on city and town councils may represent clients in superior court in cases that involve members of the police department in such council member's city as adverse witnesses. 51

Declaration of a Conflict

When a public officer or employee (or their relative) has a substantial interest in any decision of or contract, sale, purchase, or service to their city or town, the public officer or employee must:

- Refrain from <u>participating in any manner</u> (voting, discussing, or in any way attempting to influence) a decision of the governing body or agency of the city or town; and
- 2. Declare that a substantial interest exists and make it known in the official records of the city or town. For a member of the council, this can be done by declaring at a council meeting that a conflict of interests exists and having this declaration officially entered in the minutes. For

an employee who faces a conflict of interests situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists and refrain from participating in any manner in the decision or issue. 52

The provisions of state law relating to conflict of interests, specifically the requirement that members of the council refrain from participating in or attempting to influence a decision in which they have a substantial interest, may preclude the council from acting as required by law in its official capacity. For example, this situation may occur when a majority of the members of the entire council (not just those present at a particular meeting) have a substantial conflict of interests. To address this potential problem, state law provides that if the conflict of interests statutes prevent a public body from acting as required by law in its official capacity, such action shall be allowed if the members of the public body with the apparent conflicts make known their substantial interests in the official records of the public body.⁵³ For example, each affected council member should state that he or she has a substantial interest in the issue before the council. and then make sure it is recorded in the official minutes of the meeting. Such statement should be made at the beginning of any discussion of the issue by the council. This process can be tricky, so seek legal counsel before proceeding.

Legal Opinions

If you ask your city or town attorney for an opinion on conflict of interests, the request is confidential. However, formal final opinions are a matter of public record and must be filed with the city or town clerk.⁵⁴ This filing requirement does not apply to verbal communications between a mayor or council member and the city/town attorney.

Filing of Disclosures

The clerk must maintain a special file for all disclosures of conflicts of interests. One method to comply with this requirement would be to place a separate copy of the council meeting minutes when a conflict is declared in a special file labeled "Conflict of Interests Disclosures."

Penalties

A public officer or employee who <u>intentionally or knowingly</u> conceals or fails to disclose any substantial interest or engages in any of the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 6 felony, which carries a penalty of one and one-half years imprisonment or a maximum fine of \$150,000, plus a conviction will automatically forfeit office. A public officer or employee who <u>negligently or recklessly</u> violates the conflict of interests law by failing to disclose a

substantial interest or engaging in the activities prohibited by A.R.S. § 38-503 through 38-505, is guilty of a class 1 misdemeanor, which is punishable by imprisonment for up to six months or a fine of not more than \$2,500. Any person affected by a decision of a public agency where a conflict of interests is alleged may bring a civil suit in superior court, which may order equitable relief including attorneys fees to the prevailing party. In addition, any contract made in violation of the law may be voided by action of the city or town. 55 WHEN IN DOUBT ABOUT POTENTIAL CONFLICTS, ASK YOUR ATTORNEY!

PUBLIC RECORDS

Arizona's Public Records Law is an odd paradox. On the one hand, the sweeping language of its core provisions makes the law appear to be straightforward and simple. On the other hand, the hundreds of exceptions in other statutes and judicial decisions can make application of the law rather complex at times. Given this unique blend of simplicity and complexity, you should learn the following basics, but then seek immediate assistance if you directly receive a request for public records.

Simple and Sweeping

Arizona's Public Records Law commands that "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." 56 The law applies to, among others, officers of cities and towns.⁵⁷ The definition of "public records" is quite sweeping, so the law reaches not only paper items (including "all books, papers, maps, photographs or other documentary materials"), but also all other information "regardless of physical form or characteristics, including ... items produced or reproduced on film or electronic media." 58 Importantly, if any doubts exist about whether a member of the public can see a particular document, courts have declared that public records are "presumed open to the public for inspection."59

Complex Maze of Exceptions

That presumption of openness, however, is just a presumption and not an absolute rule. Indeed, the Arizona Supreme Court has recognized three sets of exemptions to the sweeping presumption of openness: when confidentiality restrictions apply, when privacy interests of individuals prevail over the public's right to know, or when the best interests of the government outweigh the public's right to inspection.⁶⁰

First, Congress and the Legislature have enacted hundreds of confidentiality exceptions to the Public Records Law. Often buried in obscure niches of federal and state statute books, these confidentiality

restrictions usually are designed to protect the public at large (e.g., prevent disclosure of the vulnerability of certain facilities to sabotage or attack), ⁶¹ guard the safety of certain individuals (e.g., prevent disclosure of the home addresses of judges, prosecutors, public defenders, peace officers, and victims of domestic violence, stalking, or harassment), ⁶² and protect against identity theft (e.g., prevent disclosure of social security numbers). ⁶³ Note that you do not have independent authority to promise that documents will be protected as confidential. ⁶⁴

Second, privacy interests may protect certain information in public records from being released. For example, the Arizona Supreme Court declared that a public teacher's birth date could be withheld from public inspection, based on the court's recognition that such personal identifying information could be combined with other information, which in turn could lead to identity theft. 65

Finally, a record may be withheld from public inspection when disclosure would be detrimental to "the best interest" of the government. The Arizona Court of Appeals later clarified this otherwise broad exemption when it noted that while "public records are presumed open to the public for inspection," certain records may be withheld if "the public official can demonstrate a factual basis why a particular record ought not be disclosed to further an important public or private interest." Note that the burden is on the public official to prove that the record should be kept from the public rather than on the person seeking the record.

Steps to Comply

Public officials should keep the following seven steps in mind to comply with public records requests.

Step One: Properly Maintain Public Records. Arizona law imposes duties on public officers even before they receive a request to produce public records for inspection. For example, the law mandates that "[a]ll officers and public bodies shall maintain all records ... reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state."67 Moreover, "[e]ach public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to" an authorized document retention policy.68

Step Two: Seek Assistance. With the exceptions to the Public Records Law ever evolving and sometimes "hidden" in statute books and Judicial decisions, application of Arizona's Public Records Law can be complex. Therefore, if you ever receive a request for a public record, then the best practice is to seek help immediately from staff members who are more familiar with the law. Staff members, in turn, should contact their legal counsel for guidance to avoid problems.

Step Three: Receiving a Public Records Request. The law allows "any person" to request access to a public record. Importantly, the law does not require people to identify themselves when they are seeking access to public records. Nor do they have to identify why they want to see the record.

Step Four: Act "Promptly." The law declares that "[a]ccess to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record," although the amendment does not define precisely what "promptly" means. ⁶⁹ Denying access to a public record exposes the public body to liability, so reasonable efforts must be made to provide the requested documents "promptly."

Step Five: Inspection and Copying. Members of the public actually have three rights relating to public records. First, they have a right to "inspect" those documents, which essentially means they may "examine" or "look at" the requested records.70 Second, in light of the numerous exceptions to the Public Records Law, a person may request the custodian of the public records to "also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person."71 (A court still may review the withheld documents and order them disclosed.) Third, if a person wants, they are entitled to get "copies, printouts or photographs" of the records, which must be provided "promptly."

Certain records may contain information that legitimately should be withheld from public inspection. In those situations, the information that is confidential, private, or harmful to the best interest of the government should be withheld but the rest of the record should be made available to the person requesting the public record.⁷²

Step Six: Recovering Costs. Searching for and making copies of public records costs time and money. The law recognizes two categories of requestors and limits what each may be charged. When a person requests public records for a "commercial purpose" – for example, obtaining lists of names to try to sell insurance – then the public body may charge a "reasonable fee" for both the time searching for the records and the actual cost of

the copying.⁷³ When, however, the request is not for a commercial purpose, then the public body may charge only for the cost of the copying; it is not authorized to charge for the cost of searching for the records.

NOTE: Because of the First Amendment, requests by journalists are *not* for a commercial purpose.

Step Seven: Mailing. A recent amendment allows a person to "request that the custodian mail a copy of any public record not otherwise available on the public body's web site to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges."⁷⁴

Violations

Violations of public records laws come in two forms: "governmental" violations and "personal" violations.

"Governmental" violations occur when the government (operating through public officials and employees) fails to comply with the public records law by, for example, refusing to produce public records, purposefully delaying the release of public records, refusing to release records based on speculation that they may contain information that does not need to be produced,75 or overcharging for copies of public records.76 A person "who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court If the court determines that a person was wrongfully denied access to or the right to copy a public record and if the court finds that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court."⁷⁷ Additionally, "[a]ny person who is wrongfully denied access to public records pursuant to the provisions of this article shall have a cause of action against the officer or public body for any damages resulting therefrom."78

"Personal" violations occur when, for example, a public officer or employee releases confidential information that is protected from disclosure by statute, 79 steals or in an unauthorized way removes, secretes, mutilates, or defaces a public record, 80 or otherwise "tampers with a public record" by destroying, altering, or falsifying a public record. The penalties for personal violations can range from removal from office and imposition of civil penalties to being convicted of a class 4, 5, or 6 felony.

Practical Tips

To avoid problems, you might want to keep the following three tips in mind. First, whenever creating documents (including informal writings,

such as email, which are subject to the Public Records Law⁸²), presume they will be public records available for inspection, copying, and printing on the front page of the local newspaper. Therefore, be as careful with the tone and language of the document as you are with the substantive accuracy of your writing.

Second, don't "tamper" with a public record – by destroying it, backdating it, hiding it, altering it (such as erasing or changing portions of it), or otherwise falsifying it. Each of these acts is a crime in Arizona.

Third, whenever you receive a request for a public record, it is a sound practice to immediately seek help from staff.

INCOMPATIBILITY OF OFFICES

On many occasions, local officials have asked the League whether a public official may hold two or more public offices at one time. In response to these requests, we compiled the following information to help in determining when two or more public offices may be incompatible.

Early Concepts of Incompatible Offices

Arizona's law prohibiting the holding of incompatible offices can be traced, in large part, to early English common law. Offices were said to be incompatible or inconsistent if:

- The main duties of the two offices could not be carried out with care and ability; or
- One office is subordinate to and interferes with the other office such that the duties of the two offices cannot be performed at the same time with "impartiality and honesty."

Very few laws, if any, have been based upon the first principle. Apparently, it has been difficult to determine when an individual fails to execute the duties of two public offices with "care and ability." The second principle mentioned above has been the basis for most Arizona law on the incompatibility of public offices.⁸³

State Laws and Interpretations

From Arizona's Constitution and statutes, and interpretations by the Attorney General and the League's General Counsel, we have compiled a list of legal provisions focusing on the issue of incompatible public offices.

Arizona State Constitution

- No member of the Legislature may hold any other office or be employed by the state or any county, city, or town, except a legislator may also be a school board member or a teacher.⁸⁴
- Incumbents of a salaried elective office may not "offer" themselves for nomination or election to any salaried local, state, or federal office unless during the final year of their term. However, an incumbent may resign and then run for another office.⁸⁵
- Justices of the peace may hold the additional position of police magistrate in incorporated cities and towns.⁸⁶

State Statutes

- A public official may not hold two salaried public offices at the same time. However, elected officials in the final year of their term of office may offer themselves for nomination to another elected office. The point in time at which an elected official is determined to have offered herself or himself for nomination or election to another public office is upon the filing of nomination papers or upon formal declaration of candidacy for such office, whichever occurs first.⁸⁷
- 2. Mayors, aldermen, or council members cannot receive any compensation from the city or town during the term of office for which they were elected in addition to the compensation paid to them as elected officials.⁸⁸ As a result, city and town elected officials cannot hold any other paid public office with the city or town. In the opinion of our League General Counsel, this provision also prevents a mayor or council member from resigning office and accepting another compensated position with the municipality prior to the end of the term of office for which the person was elected.⁸⁹
- Public defenders employed by the county may also serve as public defenders for a city or town.
 State law requires the city or town to reimburse the county for the public defender's services.
- 4. Members of the State Personnel Board and most state employees cannot be candidates for nomination or be elected to any paid public office, nor may they take part in managing a political party or political campaign.⁹¹ Certain state employees are exempted from these restrictions, so we suggest that you discuss individual cases with your city or town attorney.
- A person may not be a candidate for more than one public office if the elections for the offices are held on the same day and the person would be prohibited from serving both positions simultaneously.⁹²

City Charter Provisions

If you are holding office in a charter city, there may be additional limitations placed on your ability to hold other public offices. We suggest you consult the charter or your city attorney on any such provisions.

Attorney General Opinions

The Attorney General has issued a number of opinions on the topic of incompatibility of office. Of particular interest to cities and towns:

- State employees subject to the State Personnel Commission may not hold the position of city or town council member, if the council position is compensated.⁹³
- The positions of school board member and council member could be held by the same individual because the school board position was uncompensated.⁹⁴
- A legislator may not assume an elective office in a charter city during the legislative term for which he or she was elected.⁹⁵
- The duties of a county supervisor are not inherently inconsistent with the duties imposed on a member of the Arizona Board of Regents.⁹⁶

League General Counsel Opinions

The League's General Counsel has been requested on a number of occasions to issue opinions on possible instances of incompatible offices. The following is a list of these opinions:

- One individual in a non-chartered city cannot hold the positions of mayor and police judge at the same time.⁹⁷
- The compensated positions of city alderman and volunteer fireman could not be held at the same time by one individual because aldermen can only receive the specific compensation designated by law for their service as aldermen.⁹⁸
- A police judge, during absence from his post, may request another police judge or justice of the peace from a neighboring city or town to serve in his post. The city or town should, however, adopt an ordinance authorizing this arrangement.⁹⁹
- The General Counsel of the League also suggests that the offices of town manager and police magistrate not be held by one individual.

Before an employee accepts another public office, local ordinance provisions and personnel rules and regulations should be consulted. For particular employees there may be departmental regulations that also govern such activities.

NEPOTISM

As a city or town official, you must exercise caution when your relatives are being considered for appointment to offices or positions of employment with the city or town. Arizona's anti-nepotism statute prohibits public officials from appointing their relatives to offices or positions of employment compensated from public funds. 100

Specifically, any executive, legislative, ministerial, or judicial officer cannot appoint or vote for (or even suggest, arrange, or be a party to) the appointment of a relative who is related by blood or marriage "within the third degree" to a paid office or position of employment. Public officers of a city or town subject to this restriction would include mayors, council members, appointed officials, and department heads.

As mentioned above, the law prohibits the appointment of relatives by blood or marriage "within the third degree." To apply this law accurately, there is a method to compute whether a person is related within what is legally defined as the "third degree." In summary, this method of computation would prohibit a public officer from appointing or participating in the appointment of the following in-laws or blood relatives: a husband or wife, brother or sister, parent or child, great grandparents, grandparents, grandchildren, great grandchildren, uncles or aunts, and nephews or nieces. 101 To illustrate, the Attorney General found that the wife of a justice of the peace could be appointed by her husband to perform the function of setting bail. 102 This Opinion was based in part on the fact that the public official's wife was not compensated for these duties. In another Attorney General's Opinion a justice of the peace could not appoint his wife's sister to a compensated position of clerk without violating this law. 103

One important question is whether a city or town employee can continue employment after a relative within the third degree has assumed a position on the city or town council or some other position with appointment authority. In addressing a situation of this nature, the General Counsel of the League was of the opinion that an employee could continue employment even though a relative was elected to the city or town council. 104 However, if a situation arises where the employee's appointment or reappointment is placed before the council, the relative on the council should not participate in any way in that decision. 105

The council/manager form of government or the existence of a merit system also affect the application of the anti-nepotism law because the law does not prohibit the appointment or employment of a relative, but rather governs the participation of the related public official in the decision-making process. If there are questions that relate to nepotism, we suggest that you discuss these with your local city or town attorney. In most instances, questions of nepotism can be clarified quickly due to the precise nature of this law.

FINANCIAL DISCLOSURE

State law requires elected officials, including those appointed to elective office, to file an annual financial disclosure statement. Since 1984, cities and towns have been required to adopt standards of financial disclosure consistent with the standards imposed for state elected officials.

The annual financial disclosure statement is due each year on January 31 covering the immediately preceding calendar year. The city or town clerk should make the forms available to meet this filing requirement. ¹⁰⁸ Candidates for city or town office must file the financial disclosure statement covering the preceding twelve-month period when nomination papers are filed. ¹⁰⁹

The law requires elected public officials to disclose personal financial data including information on members of the "household" (defined as the public official's spouse and any minor child of whom the official has legal custody). Information on business holdings is required under certain circumstances. Property owned by the official or a member of the official's household must also be reported (with certain exceptions).

The report must be filed with the city or town clerk and is available for public inspection. Failure to file or filing a false or incomplete financial disclosure statement, if done knowingly, is a class 1 misdemeanor.¹¹⁰

LIMITS ON ENTERTAINMENT

In 2000, the Legislature extended part of the state's lobbying laws to prohibit certain entertainment for local officials if paid by compensated lobbyists. The new law provides that it is illegal for a compensated lobbyist to offer and for a member of a city or town council (as well as other local governing bodies) to accept "an expenditure or single expenditure for entertainment." ¹¹¹

Careful attention to these three parts – the giver, the recipient, and the outlawed gift – is important because violations may result in criminal and civil penalties. 112 As for the giver, the law applies to "a

person who for compensation attempts to influence the passage or defeat of legislation, ordinances. rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board or any person acting on that person's behalf." So even if the people offering entertainment do not call themselves "lobbyists," the law still applies if they are compensated to do any of the things listed. Next, as for the receiver, the law applies in the city and town context to members of the council (whether elected or appointed), but not directly to city or town staff (although local ordinances or policies might).113

Third, the law prohibits giving or receiving "entertainment," which is defined to mean "the amount of any expenditure paid or incurred for admission to any sporting or cultural event or for participation in any sporting or cultural activity."114 As written, the ban prohibits not only receiving tickets to attend a sporting or cultural event, but also having a compensated lobbyist pay for your participation in any cultural or sporting event. In other words, a compensated lobbyist may not offer and council members cannot accept - tickets to sporting or cultural events (such as baseball, basketball, football, hockey, or soccer, or any other sports at any level - professional, college, or local or art gallery, ballet, movie, opera, theatre, or anything else). Nor may they offer to pay or you allow or accept their payment for your "participation" in "sporting or cultural" activities such as golf, fishing, hunting, bowling, yoga, painting, ballet, or any other activity.

CONCLUSION

Accepting a position as a public official may introduce a number of complex and confusing legal situations into an individual's life. This report has tried to shed some light on selected areas of law that place restrictions on the activities of public officials in Arizona cities and towns. If the report has raised questions, please do not hesitate to contact the League office. However, we emphasize the importance of consultation with your personal attorney or the city or town attorney on specific questions regarding all of the subjects discussed in this report.

ENDNOTES

- The information about the Open Meeting Law (A.R.S. § 38-431 through 38-431.09) presented in this
 section is taken largely from a summary prepared by the Attorney General's Office. The League prepared
 these endnotes.
- 2. A.R.S. § 38-431.09.
- 3. A.R.S. § 38-431.01(A). The Open Meeting Law grants the public the right to attend and listen to a public body's deliberations and proceedings. See Attorney General Opinions I83-049 and I84-133. This includes the right to know exactly how each individual council member votes on an issue. A superior court has ruled that a secret ballot procedure used to select the mayor from the common council violates the Open Meeting Law. See Mohave County Attorney v. Common Council of the City of Kingman (No. SA-140, June 14, 1983).
- 4. A.R.S. § 38-431(4).
- 5. A.R.S. § 38-431(6).
- 6. For a discussion of the applicability of the Open Meeting Law to advisory committees, see Attorney General Opinion 192-007.
- 7. A.R.S. § 38-431.02 (A).
- 8. A.R.S. § 38-431.02(A)(1).
- 9. A.R.S. § 38-431.02(F).
- 10. A.R.S. § 38-431.02(C).
- 11. A.R.S. § 38-431.02 (B).
- 12. A.R.S. § 38-431.02(E).
- 13. A.R.S. § 38-431.02(D),(J).
- 14. A.R.S. § 38-431.05 (B)(4).
- 15. A.R.S. § 38-431.02(H).
- A.R.S. § 38-431.09. The Open Meeting Law does not specifically prohibit a public body from considering agenda items in an order different from that appearing on the agenda. However, when changing the order of discussion, it must be done in a way that is not designed to deny any member of the public the opportunity to listen to the discussion of any agenda item. See Attorney General Opinion 183-56.
- 17. A.R.S. § 38-431.02(I).
- 18. A.R.S. § 38-431.02 (H).
- 19. A.R.S. § 38-431.02(K). This subsection was amended in 2002 to allow any member of the council to make current event announcements. Previously, this authority was limited to the mayor and chief administrator.
- 20. A.R.S. § 38-431.01(G).
- 21. A.R.S. § 38-431(2).
- 22. A.R.S. § 38-431.03(C).

- 23. A.R.S. § 38-431.03 (D). See also *Johnson v. Tempe Elementary School Dist. Governing Board*, 199 Ariz. 567, 20 P.3d 1148 (App. 2000) (court of appeals dismissed a public body's appeal as improper when the public body instructed its attorney in an executive session to file an appeal but then failed to confirm that instruction in public with a proper formal vote).
- 24. A.R.S. § 38-431.03(A)(1). The other exceptions are also set forth in Section 38-431.03(A).
- 25. See City of Prescott v. Town of Chino Valley, 66 Ariz. 480, 803 P.2d 891(1990).
- 26. See *Tanque Verde Unified School Dist. v. Bernini*, 206 Ariz. 200, 76 P.3d 874 (App. 2003) (affirming that a public body violated the Open Meeting Law by conducting a site selection process in an executive session).
- 27. A.R.S. § 38-431.01(B).
- 28. A.R.S. § 38-431.01(C).
- 29. A.R.S. § 38-431.01(D).
- 30. A.R.S. § 38-431.03(B).
- 31. A.R.S. § 38-431.01(E).
- 32. A.R.S. § 38-431(4).
- 33. *Id*.
- 34. Ariz. Att'y Gen. Op. No. I05-004 at 2 ("Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. ... While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.").
- 35. *Id.* at 4 ("Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions.... Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss the topic that is or may be presented to the public body for a decision.")(quoting *Arizona Agency Handbook* § 7.5.2; Ariz, Att'y Gen. 2001).
- 36. A.R.S. § 38-431.05(A).
- 37. A.R.S. § 38-431.07(A).
- 38. A.R.S. § 38-431.01(H).
- 39. A.R.S. § 38-502(9).
- 40. Compare A.R.S. § 38-502(11) ("substantial interest") and 38-502(10)("remote interest"); see also Attorney General Opinion I85-052.
- 41. A.R.S. § 38-502(11).
- 42. A.R.S. § 38-503(C). See also Attorney General Opinions 70-5, 79-067, 79-133, and General Counsel Opinion May 17, 1979, and letter dated October 23, 1984 from Attorney General to Town of Parker.
- 43. A.R.S. § 38-503(C)(2).
- 44. A sample resolution establishing a policy to govern such purchases from members of the council without going to public bid is available from the League office.
- 45. Attorney General Opinion I85-067.

- 46. A.R.S. § 38-504(A).
- 47. A.R.S. § 38-504(B).
- 48. A.R.S. § 38-505.
- 49. A.R.S. § 38-504(C).
- 50. State Bar Ethics Opinion No. 74-28.
- 51. See Gomez v. Superior Court, 149 Ariz. 223, 717 P.2d 902 (1986).
- 52. A.R.S. § 38-503(A), (B).
- 53. A.R.S. § 38-508.
- 54. A.R.S. § 38-507.
- 55. A.R.S. § 38-506 and A.R.S. § 38-511.
- 56. A.R.S. § 39-121.
- 57. A.R.S. § 39-121.01(A).
- 58. A.R.S. § 41-1350.
- 59. See, e.g., Carlson v. Pima County, 687 P.2d 1242, 1246 (Ariz. 1984).
- 60. *Id.*
- 61. See, e.g., A.R.S. § 39-126.
- 62. See, e.g., A.R.S. §§ 11-483, 16-153, 39-123(A).
- 63. See, e.g., 42 U.S.C. § 405(c)(ii), (vii)(l), and A.R.S. §§ 44-1373, -1373.03.
- 64. *Moorehead v. Arnold*, 637 P.2d 1242 (Ariz. App. 1981).
- 65. Scottsdale Unified School Dist. v. KPNX Broadcasting, 955 P.2d 534, 537 (Ariz. 1998).
- 66. Star Publishing Co. v. Pima County Attorney's Office, 891 P.2d 899, 901 (Ariz. App. 1994),
- 67. A.R.S. § 39-121.01(B).
- 68. A.R.S. § 39-121.01(C).
- 69. A.R.S. § 39-121.01 (D)(1), (E).
- 70. A.R.S. § 39-121.01(D)(1).
- 71. A.R.S. § 39-121.01(D)(2).
- 72. See, e.g., Carlson, 687 P.2d at 1243-1246 ("a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names"); see also Cox Arizona Publications v. Collins, 852 P.2d 1194, 1198 (Ariz. 1993) (finding that the County Attorney violated the Public Records Law by withholding public records without offering to redact portions and producing the rest for inspection).
- 73. A.R.S. § 39-121.03 (explaining what may be charged for commercial copies).

- 74. A.R.S. § 39-121.01(D)(1).
- 75. Star Publishing Co. v. Pima County Attorney's Office, 891 P.2d 899 (Ariz. App. 1994).
- 76. Hanania v. City of Tucson, 624 P.2d 332 (Ariz. App. 1980).
- 77. A.R.S. § 39-121.02(A),(B).
- 78. A.R.S. § 39-121.02(C).
- 79. See, e.g., A.R.S. §§ 39-124, 13-2401.
- 80. See, e.g., A.R.S. § 38-421.
- 81. See, e.g., A.R.S. §§ 13-2407.
- 82. Ariz. Att'y Gen. Op. No. I05-04 at 10 ("E-mails that board members or staff generate pertaining to the business of the public body are public records. [citations omitted] Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection.").
- 83. McQuillin on Municipal Corporations Volume 3, Section 12.67. See also Attorney General Opinion 76-41.
- 84. Arizona Constitution, Article IV, Part 2, Section 5; Attorney General Opinion 77-221.
- 85. Arizona Constitution, Article XXII, Section 18. See also A.R.S. § 38-296 and Attorney General Opinion 82-001.
- 86. Arizona Constitution, Article VI, Section 32. Justice of the peace and magistrate courts are not courts of record and would not be subject to the restriction of Article VI, Section 28 of the Constitution.
- 87. A.R.S. § 38-296.
- 88. A.R.S. § 9-304.
- 89. General Counsel Opinion August 17, 1988.
- 90. A.R.S. § 11-585.
- 91. A.R.S. § 41-772.
- 92. A.R.S. § 38-296.01.
- 93. Attorney General Opinion 71-32-L. The Attorney General further opined that the State Personnel Commission's jurisdiction extends to all state offices and positions except those specifically exempted by law. See also A.R.S.§ 41-772.
- 94. Attorney General Opinions 72-20-L and 80-061.
- 95. Attorney General Opinion 77-221.
- 96. Attorney General Opinion 80-019; see also Attorney General Opinions 59-30, 75-2-L, and 77-216.
- 97. General Counsel Opinion December 10, 1965.
- 98. General Counsel Opinion November 2, 1966.
- 99. General Counsel Opinion May 26, 1970.
- 100. A.R.S. § 38-481.

- 101. See Graham County v. Buhl, 76 Ariz. 275, 263 P.2d. 537 (1953), and Attorney General Opinion 77-115.
- 102. Attorney General Opinion 63-75-L.
- 103. Attorney General Opinion 63-9. See also Attorney General Opinions 54-26, 65-6-L.
- 104. General Counsel Opinions June 24, 1968 and January 19, 1977. See also Attorney General Opinion 78-71.
- 105. See Attorney General Opinion 77-138.
- 106. A.R.S. Title 38, Chapter 3.1, Article 1.
- 107. A.R.S. § 38-545.
- 108. See League Municipal Election Manual for forms.
- 109. A.R.S. § 38-543.
- 110. A.R.S. § 38-544.
- 111. A.R.S. § 41-1232.08(B).
- 112. Attorney General Opinion I00-031.
- 113. League General Counsel Opinion January 15, 2001.
- 114. A.R.S. § 41-1231(5).